Volume 1

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

2004

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, March 2, 2004
and General Election, November 2, 2004

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

2003–04 Regular Session
2003–04 Third Extraordinary Session
2003–04 Fourth Extraordinary Session
2003–04 Fifth Extraordinary Session

Compiled by
DIANE F. BOYER-VINE
Legislative Counsel

CONTENTS

Page of Summary Digest

APPENDIX

EFFECTIVE DATES

Regular Session

The 2003–04 Regular Session reconvened on January 5, 2004, and adjourned *sine die* on November 30, 2004. Statutes enacted in 2004, other than those taking immediate effect, will become effective January 1, 2005.

The effective date of a joint or concurrent resolution is the date it is filed with the Secretary of State.

An initiative statute or referendum or a constitutional amendment proposed by the Legislature and adopted by the people takes effect the day after the election unless the measure provides otherwise.

Statutes Which Take Effect Immediately. An urgency statute, and a statute calling an election, providing for a tax levy, or making an appropriation for the usual current expenses of the state may take effect immediately. Such a statute becomes *effective* on the date it is filed with the Secretary of State.

Operative Date. The provisions of a statute normally become operative on the date it takes effect. However, any statute may, by its own terms, delay the *operation* of its provisions until the happening of some contingency or until a specified time. Also, a later statute or a general provision in a particular code may delay the operation of a statute to a time after its effective date.

Extraordinary Sessions

An urgency statute enacted at a special session of the Legislature takes effect immediately, as outlined above, and the same rules apply with respect to a delayed *operative* date. A nonurgency statute takes effect on the 91st day after adjournment of the special session at which the bill was passed. The effective date of a concurrent resolution is the date it is filed with the Secretary of State.

The 2003–04 Third Extraordinary Session reconvened on January 6, 2004, and adjourned *sine die* on January 15, 2004. Please refer to the preceding year's Statutes and Amendments to the Codes for statutes enacted prior to the reconvening date.

The 2003–04 Fourth Extraordinary Session reconvened on January 6, 2004, and adjourned *sine die* on November 30, 2004. The 91st day after adjournment is March 1, 2005.

The 2003–04 Fifth Extraordinary Session reconvened on January 6, 2004, and adjourned *sine die* on November 30, 2004. Please refer to the preceding year's Statutes and Amendments to the Codes for statutes enacted prior to the recovening date.

CONSTITUTIONAL AMENDMENTS

Adopted Since Publication of Statutes of 2003

NOTE: Since the publication of the Statutes of 2003, the following changes were adopted at the Primary Election, March 2, 2004, and the General Election, November 2, 2004:

Article	*Section*	*Change*	*Constitutional amendment number*	*Year*	*Resolution chapter number*	*Proposition number*	*Subject*
I	3	Amendment	SCA 1	2004	1	59	Public Records. Open Meetings.
II	5	Amendment	SCA 18	2004	103	60	Election Rights of Political Parties.
III	9	Addition	SCA 18	2004	103	60A	Surplus Property.
IV	10	Amendment	ACA 5	2003–04 Fifth Extraordinary Session	1	58	The California Balanced Budget Act.
IV	12	Amendment	ACA 5	2003–04 Fifth Extraordinary Session	1	58	The California Balanced Budget Act.
XI	15	Amendment	SCA 4	2004	133	1A	Protection of Local Government Revenues.
XIII	25.5	Addition	SCA 4	2004	133	1A	Protection of Local Government Revenues.
XIII B	6	Amendment	SCA 4	2004	133	1A	Protection of Local Government Revenues.

CONSTITUTIONAL AMENDMENTS—Continued

Article	*Section*	*Change*	*Constitutional amendment number*	*Year*	*Resolution chapter number*	*Proposition number*	*Subject*
XVI	1.3	Addition	ACA 5	2003–04 Fifth Extraordinary Session	1	58	The California Balanced Budget Act.
XVI	20	Addition	ACA 5	2003–04 Fifth Extraordinary Session	1	58	The California Balanced Budget Act.
XXXV	1	Addition	Initiative Measure	2004	—	71	Stem Cell Research. Funding. Bonds.
XXXV	2	Addition	Initiative Measure	2004	—	71	Stem Cell Research. Funding. Bonds.
XXXV	3	Addition	Initiative Measure	2004	—	71	Stem Cell Research. Funding. Bonds.
XXXV	4	Addition	Initiative Measure	2004	—	71	Stem Cell Research. Funding. Bonds.
XXXV	5	Addition	Initiative Measure	2004	—	71	Stem Cell Research. Funding. Bonds.
XXXV	6	Addition	Initiative Measure	2004	—	71	Stem Cell Research. Funding. Bonds.
XXXV	7	Addition	Initiative Measure	2004	—	71	Stem Cell Research. Funding. Bonds.

PROPOSED CHANGES IN CONSTITUTION

NOTE: The following proposed changes were defeated at the Primary Election, March 2, 2004, and the General Election, November 2, 2004:

Article	*Section*	*Proposed Change*	*Constitutional amendment number*	*Year*	*Resolution chapter number*	*Proposition number*	*Subject*
II	5	Amendment	Initiative Measure	2004	—	62	Elections. Primaries.
IV	12	Amendment	Initiative Measure	2004	—	56	State Budget, Related Taxes, and Reserve. Voting Requirements. Penalties.
IV	19	Amendment	Initiative Measure	2004	—	68	Non-Tribal Commercial Gambling Expansion. Tribal Gaming Compact Amendments. Revenues, Tax Exemptions.
IV	19	Amendment	Initiative Measure	2004	—	70	Tribal Gaming Compacts. Exclusive Gaming Rights. Contributions to State.
XIII B	6	Amendment	Initiative Measure	2004	—	65	Local Government Funds, Revenues. State Mandates.
XIII B	14	Addition	Initiative Measure	2004	—	68	Non-Tribal Commercial Gambling Expansion. Tribal Gaming Compact Amendments. Revenues, Tax Exemptions.
XIII E	1	Addition	Initiative Measure	2004	—	65	Local Government Funds, Revenues. State Mandates.
XIII E	2	Addition	Initiative Measure	2004	—	65	Local Government Funds, Revenues. State Mandates.

PROPOSED CHANGES IN CONSTITUTION—Continued

Article	*Section*	*Proposed Change*	*Constitutional amendment number*	*Year*	*Resolution chapter number*	*Proposition number*	*Subject*
XIII E	3	Addition	Initiative Measure	2004	—	65	Local Government Funds, Revenues. State Mandates.
XVI	8.3	Addition	Initiative Measure	2004	—	68	Non-Tribal Commercial Gambling Expansion. Tribal Gaming Compact Amendments. Revenues, Tax Exemptions.

CONSTITUTION OF THE STATE OF CALIFORNIA

1879

CONSTITUTION OF THE STATE OF CALIFORNIA*

AS AMENDED AND IN FORCE NOVEMBER 2, 2004

PREAMBLE

We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

ARTICLE I

DECLARATION OF RIGHTS

SECTION 1. [*Repealed November 5, 1974. See Section 1, below.*]

[*Inalienable Rights*]

SECTION 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy. [*New section adopted November 5, 1974.*]

[*Liberty of Speech and of the Press—Newspersons' Refusal to Disclose Information Sources Not Adjudged in Contempt*]

SEC. 2. (a) Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

(b) A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, shall not be adjudged in contempt by a judicial, legislative, or administrative body, or any other body having the power to issue subpoenas, for refusing to disclose the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

Nor shall a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

* Adopted by the people on May 7, 1879. Certain spelling and capitalization variances reflect State Printer's style in effect at time of adoption of amendments.

As used in this subdivision, ''unpublished information'' includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated. [*As amended June 3, 1980.*]

[*Right to Assemble and to Petition—Right of Access to Government Information*]

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect

the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses. [*As amended November 4, 2004.*]

SEC. 4. [*Repealed November 5, 1974. See Section 4, below.*]

[*Liberty of Conscience*]

SEC. 4. Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion.

A person is not incompetent to be a witness or juror because of his or her opinions on religious beliefs. [*New section adopted November 5, 1974.*]

SEC. 5. [*Repealed November 5, 1974. See Section 5, below.*]

[*The Military*]

SEC. 5. The military is subordinate to civil power. A standing army may not be maintained in peacetime. Soldiers may not be quartered in any house in wartime except as prescribed by law, or in peacetime without the owner's consent. [*New section adopted November 5, 1974.*]

SEC. 6. [*Repealed November 5, 1974. See Section 6, below.*]

[*Slavery Prohibited*]

SEC. 6. Slavery is prohibited. Involuntary servitude is prohibited except to punish crime. [*New section adopted November 5, 1974.*]

[*Due Process of Law—Use of Pupil School Assignment or Pupil Transportation*]

SEC. 7. (a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation. In enforcing this subdivision or any other provision of this Constitution, no court of this State may impose upon the State of California or any public entity, board, or official any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation, (1) except to remedy a specific violation by such party that would also constitute a violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution, and (2) unless a federal court would be permitted under federal decisional law to impose that obligation or re-

sponsibility upon such party to remedy the specific violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution.

Except as may be precluded by the Constitution of the United States, every existing judgment, decree, writ, or other order of a court of this State, whenever rendered, which includes provisions regarding pupil school assignment or pupil transportation, or which requires a plan including any such provisions shall, upon application to a court having jurisdiction by any interested person, be modified to conform to the provisions of this subdivision as amended, as applied to the facts which exist at the time of such modification.

In all actions or proceedings arising under or seeking application of the amendments to this subdivision proposed by the Legislature at its 1979–80 Regular Session, all courts, wherein such actions or proceedings are or may hereafter be pending, shall give such actions or proceedings first precedence over all other civil actions therein.

Nothing herein shall prohibit the governing board of a school district from voluntarily continuing or commencing a school integration plan after the effective date of this subdivision as amended.

In amending this subdivision, the Legislature and people of the State of California find and declare that this amendment is necessary to serve compelling public interests, including those of making the most effective use of the limited financial resources now and prospectively available to support public education, maximizing the educational opportunities and protecting the health and safety of all public school pupils, enhancing the ability of parents to participate in the educational process, preserving harmony and tranquility in this State and its public schools, preventing the waste of scarce fuel resources, and protecting the environment.

[*Privileges and Immunities*]

(b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked. [*As amended November 6, 1979.*]

[*Sex, Race, Etc., Not a Disqualification for Business*]

SEC. 8. A person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin. [*Former Section 18 of Article XX, as renumbered and amended November 5, 1974.*]

SEC. 9. [*Repealed November 5, 1974. See Section 9, below.*]

[*Bill of Attainder—Ex Post Facto Law—Obligation of Contract*]

SEC. 9. A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed. [*New section adopted November 5, 1974.*]

SEC. 10. [*Repealed November 5, 1974. See Section 10, below.*]

[*Detention of Witnesses—No Imprisonment for Debt*]

SEC. 10. Witnesses may not be unreasonably detained. A person may not be imprisoned in a civil action for debt or tort, or in peacetime for a militia fine. [*New section adopted November 5, 1974.*]

SEC. 11. [*Repealed November 5, 1974. See Section 11, below.*]

[*Suspension of Habeas Corpus*]

SEC. 11. Habeas corpus may not be suspended unless required by public safety in cases of rebellion or invasion. [*New section adopted November 5, 1974.*]

[*Bail—Release on Own Recognizance*]

SEC. 12. A person shall be released on bail by sufficient sureties, except for:

(a) Capital crimes when the facts are evident or the presumption great;

(b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or

(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convinving evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

A person may be released on his or her own recognizance in the court's discretion. [*As amended November 8, 1994.*]

SEC. 13. [*Repealed November 5, 1974. See Section 13, below.*]

[*Unreasonable Seizure and Search—Warrant*]

SEC. 13. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported

by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. [*New section adopted November 5, 1974.*]

SEC. 14. [*Repealed November 5, 1974. See Section 14, below.*]

[*Felony Defendant Before Magistrate—Prosecutions*]

SEC. 14. Felonies shall be prosecuted as provided by law, either by indictment or, after examination and commitment by a magistrate, by information.

A person charged with a felony by complaint subscribed under penalty of perjury and on file in a court in the county where the felony is triable shall be taken without unnecessary delay before a magistrate of that court. The magistrate shall immediately give the defendant a copy of the complaint, inform the defendant of the defendant's right to counsel, allow the defendant a reasonable time to send for counsel, and on the defendant's request read the complaint to the defendant. On the defendant's request the magistrate shall require a peace officer to transmit within the county where the court is located a message to counsel named by defendant.

A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings. [*New section adopted November 5, 1974.*]

[*Felony—Prosecution by Indictment*]

SEC. 14.1. If a felony is prosecuted by indictment, there shall be no postindictment preliminary hearing. [*New section adopted June 5, 1990. Initiative measure.*]

SEC. 14½. [*Repealed November 5, 1974.*]

SEC. 15. [*Repealed November 5, 1974. See Section 15, below.*]

[*Criminal Prosecutions—Rights of Defendant—Due Process of Law—Jeopardy—Depositions—Assistance of Counsel*]

SEC. 15. The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant. The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel.

Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law. [*New section adopted November 5, 1974.*]

[*Trial by Jury*]

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

[*Number of Jurors in Civil Trials*]

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes other than causes within the appellate jurisdiction of the court of appeal the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

[*Number of Jurors in Criminal Trials*]

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. [*As amended June 2, 1998.*]

SEC. 17. [*Repealed November 5, 1974. See Section 17, below.*]

[*Unusual Punishment—Excessive Fines*]

SEC. 17. Cruel or unusual punishment may not be inflicted or excessive fines imposed. [*New section adopted November 5, 1974.*]

SEC. 18. [*Repealed November 5, 1974. See Section 18, below.*]

[*Treason*]

SEC. 18. Treason against the State consists only in levying war against it, adhering to its enemies, or giving them aid and comfort. A person may not be convicted of treason except on the evidence of two witnesses to the same overt act or by confession in open court. [*New section adopted November 5, 1974.*]

SEC. 19. [*Repealed November 5, 1974. See Section 19, below.*]

[*Eminent Domain*]

SEC. 19. Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation. [*New section adopted November 5, 1974.*]

SEC. 20. [*Repealed November 5, 1974. See Section 20, below.*]

[*Rights of Noncitizens*]

SEC. 20. Noncitizens have the same property rights as citizens. [*New section adopted November 5, 1974.*]

SEC. 21. [*Repealed November 5, 1974. See Section 21, below.*]

[*Separate Property of Husband and Wife*]

SEC. 21. Property owned before marriage or acquired during marriage by gift, will, or inheritance is separate property. [*Former Section 8 of Article XX, as renumbered November 5, 1974.*]

SEC. 22. [*Repealed November 5, 1974. See Section 22, below.*]

[*No Property Qualification for Electors*]

SEC. 22. The right to vote or hold office may not be conditioned by a property qualification. [*New section adopted November 5, 1974.*]

SEC. 23. [*Repealed November 5, 1974. See Section 23, below.*]

[*Grand Juries*]

SEC. 23. One or more grand juries shall be drawn and summoned at least once a year in each county. [*New section adopted November 5, 1974.*]

[*Constitutional Rights—Rights Reserved*]

SEC. 24. Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.

In criminal cases the rights of a defendant to equal protection of the laws, to due process of law, to the assistance of counsel, to be personally present with counsel, to a speedy and public trial, to compel the attendance of witnesses, to confront the witnesses against him or her, to be free from unreasonable searches and seizures, to privacy, to not be compelled to be a witness against himself or herself, to not be placed twice in jeopardy for the same offense, and to not suffer the imposition of cruel or unusual punishment, shall be construed by the courts of this State in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States, nor shall it be construed to afford greater rights to minors in juvenile proceedings on criminal causes than those afforded by the Constitution of the United States.

This declaration of rights may not be construed to impair or deny others retained by the people. [*As amended June 5, 1990. Initiative measure.*]

[*Right to Fish*]

SECTION 25. The people shall have the right to fish upon and from the public lands of the State and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the State shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this State for the purpose of fishing in any water containing fish that have been planted therein by the State; *provided*, that the Legislature may by statute, provide for the season when and the conditions under which the different species of fish may be taken. [*New section adopted November 8, 1910.*]

SEC. 26. [*Renumbered Section 1 of Article II June 8, 1976. See Section 26, below.*]

[*Constitution Mandatory and Prohibitory*]

SEC. 26. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise. [*Former Section 28, as renumbered June 8, 1976.*]

SEC. 26a. [*Repealed November 8, 1949.*]

[*Death Penalty*]

SEC. 27. All statutes of this State in effect on February 17, 1972, requiring, authorizing, imposing, or relating to the death penalty are in full force and effect, subject to legislative amendment or repeal by statute, initiative, or referendum.

The death penalty provided for under those statutes shall not be deemed to be, or to constitute, the infliction of cruel or unusual punishments within the meaning of Article 1, Section 6 nor shall such punishment for such offenses be deemed to contravene any other provision of this constitution. [*New section adopted November 7, 1972. Initiative measure.*]

[*"The Victims' Bill of Rights"*]

SEC. 28. (a) The People of the State of California find and declare that the enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights, is a matter of grave statewide concern.

The rights of victims pervade the criminal justice system, encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

To accomplish these goals, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives.

(b) Restitution. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

(c) Right to Safe Schools. All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.

(d) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(e) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety shall be the primary consideration.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail. However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(f) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(g) As used in this article, the term ''serious felony'' is any crime defined in Penal Code, Section 1192.7(c). [*New section adopted June 8, 1982. Initiative measure.*]

[*Criminal Cases—Due Process of Law—Speedy and Public Trial*]

SEC. 29. In a criminal case, the people of the State of California have the right to due process of law and to a speedy and public trial. [*New section adopted June 5, 1990. Initiative measure.*]

[*Criminal Cases—Jointure-Hearsay Evidence—Discovery*]

SEC. 30. (a) This Constitution shall not be construed by the courts to prohibit the joining of criminal cases as prescribed by the Legislature or by the people through the initiative process.

(b) In order to protect victims and witnesses in criminal cases, hearsay evidence shall be admissible at preliminary hearings, as prescribed by the Legislature or by the people through the initiative process.

(c) In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process. [*New section adopted June 5, 1990. Initiative measure.*]

[*Prohibition Against Discrimination or Preferential Treatment*]

SEC. 31. (a) The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(b) This section shall apply only to action taken after the section's effective date.

(c) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(d) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State.

(f) For the purposes of this section, ''State'' shall include, but not necessarily be limited to, the State itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the State.

(g) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing California antidiscrimination law.

(h) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section. [*New section adopted November 5, 1996. Initiative measure.*]

ARTICLE II. [*Repealed November 7, 1972. See Article II, below.*]

ARTICLE II*

VOTING, INITIATIVE AND REFERENDUM, AND RECALL

[*Heading as amended June 8, 1976.*]

SEC. 1. [*Renumbered Section 2 June 8, 1976. See Section 1, below.*]

[*Purpose of Government*]

SECTION 1. All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require. [*Former Section 26 of Article I, as renumbered June 8, 1976.*]

SEC. 1½. [*Repealed November 7, 1972.*]

SEC. 2. [*Renumbered Section 3 June 8, 1976. See Section 2, below.*]

[*Right to Vote*]

SEC. 2. A United States citizen 18 years of age and resident in this State may vote. [*Former Section 1, as renumbered June 8, 1976.*]

* New Article II adopted November 7, 1972.

SEC. 2.5. [*Repealed November 7, 1972. See Section 2.5, below.*]

[*Right to Have Vote Counted*]

SEC. 2.5. A voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted. [*New Section adopted November 5, 2002.*]

SEC. 2¾. [*Repealed November 7, 1972.*]

SEC. 3. [*Renumbered Section 4 June 8, 1976. See Section 3, below.*]

[*Residence—Registration—Free Elections*]

SEC. 3. The Legislature shall define residence and provide for registration and free elections. [*Former Section 2, as renumbered June 8, 1976.*]

SEC. 4. [*Renumbered Section 5 June 8, 1976. See Section 4, below.*]

[*Improper Practices That Affect Elections—Mentally Incompetent, Etc.*]

SEC. 4. The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony. [*Former Section 3, as renumbered June 8, 1976.*]

SEC. 5. [*Renumbered Section 6 June 8, 1976. See Section 5, below.*]

[*Primary Elections for Partisan Offices—Open Presidential Primary—Election Rights of Political Parties*]

SEC. 5. (a) The Legislature shall provide for primary elections for partisan offices, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

(b) A political party that participated in a primary election for a partisan office has the right to participate in the general election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party's candidates. [*As amended November 2, 2004.*]

[*Nonpartisan Offices*]

SEC. 6. (a) All judicial, school, county, and city offices shall be nonpartisan.

(b) No political party or party central committee may endorse, support, or oppose a candidate for nonpartisan office. [*As amended June 3, 1986.*]

[*Voting—Secret*]

SEC. 7. Voting shall be secret. [*Former Section 6, as renumbered June 8, 1976.*]

[*Initiative*]

SEC. 8. (a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.

(b) An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to 5 percent in the case of a statute, and 8 percent in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election.

(c) The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

(d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.

(e) An initiative measure may not include or exclude any political subdivision of the State from the application or effect of its provisions based upon approval or disapproval of the initiative measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of that political subdivision.

(f) An initiative measure may not contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure. [*As amended June 2, 1998.*]

[*Referendum*]

SEC. 9. (a) The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.

(b) A referendum measure may be proposed by presenting to the Secretary of State, within 90 days after the enactment date of the statute, a petition certified to have been signed by electors equal in number to 5 percent of the votes for all candidates for Governor at the last gubernatorial election, asking that the statute or part of it be submitted to the electors. In the case of a statute enacted by a bill passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, the petition may not be presented on or after January 1 next following the enactment date unless a

copy of the petition is submitted to the Attorney General pursuant to subdivision (d) of Section 10 of Article II before January 1.

(c) The Secretary of State shall then submit the measure at the next general election held at least 31 days after it qualifies or at a special statewide election held prior to that general election. The Governor may call a special statewide election for the measure. [*As amended June 5, 1990.*]

[*Initiative and Referendum—Vote and Effective Date—Conflicts—Legislative Repeal or Amendment—Titling*]

SEC. 10. (a) An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. If a referendum petition is filed against a part of a statute the remainder shall not be delayed from going into effect.

(b) If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

(c) The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.

(d) Prior to circulation of an initiative or referendum petition for signatures, a copy shall be submitted to the Attorney General who shall prepare a title and summary of the measure as provided by law.

(e) The Legislature shall provide the manner in which petitions shall be circulated, presented, and certified, and measures submitted to the electors. [*Former Section 24 of Article IV, as renumbered June 8, 1976.*]

[*Initiative and Referendum—Cities or Counties*]

SEC. 11. (a) Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide. Except as provided in subdivisions (b) and (c), this section does not affect a city having a charter.

(b) A city or county initiative measure may not include or exclude any part of the city or county from the application or effect of its provisions based upon approval or disapproval of the initiative measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of the city or county or any part thereof.

(c) A city or county initiative measure may not contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure. [*As amended June 2, 1998.*]

[*Naming Individual or Private Corporation to Office or Duty Prohibited*]

SEC. 12. No amendment to the Constitution, and no statute proposed to the electors by the Legislature or by initiative, that names any individual

to hold any office, or names or identifies any private corporation to perform any function or to have any power or duty, may be submitted to the electors or have any effect. [*Former Section 26 of Article IV, as renumbered June 8, 1976.*]

[*Recall Defined*]

SEC. 13. Recall is the power of the electors to remove an elective officer. [*New section adopted June 8, 1976.*]

[*Recall Petitions*]

SEC. 14. (a) Recall of a state officer is initiated by delivering to the Secretary of State a petition alleging reason for recall. Sufficiency of reason is not reviewable. Proponents have 160 days to file signed petitions.

(b) A petition to recall a statewide officer must be signed by electors equal in number to 12 percent of the last vote for the office, with signatures from each of 5 counties equal in number to 1 percent of the last vote for the office in the county. Signatures to recall Senators, members of the Assembly, members of the Board of Equalization, and judges of courts of appeal and trial courts must equal in number 20 percent of the last vote for the office.

(c) The Secretary of State shall maintain a continuous count of the signatures certified to that office. [*New section adopted June 8, 1976.*]

[*Recall Elections*]

SEC. 15. (a) An election to determine whether to recall an officer and, if appropriate, to elect a successor shall be called by the Governor and held not less than 60 days nor more than 80 days from the date of certification of sufficient signatures.

(b) A recall election may be conducted within 180 days from the date of certification of sufficient signatures in order that the election may be consolidated with the next regularly scheduled election occurring wholly or partially within the same jurisdiction in which the recall election is held, if the number of voters eligible to vote at that next regularly scheduled election equal at least 50 percent of all the voters eligible to vote at the recall election.

(c) If the majority vote on the question is to recall, the officer is removed and, if there is a candidate, the candidate who receives a plurality is the successor. The officer may not be a candidate, nor shall there be any candidacy for an office filled pursuant to subdivision (d) of Section 16 of Article VI. [*As amended November 8, 1994.*]

[*Legislature to Provide for Petitions, Etc.*]

SEC. 16. The Legislature shall provide for circulation, filing, and certification of petitions, nomination of candidates, and the recall election. [*New section adopted June 8, 1976.*]

[*Recall of Governor or Secretary of State*]

SEC. 17. If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively. [*New section adopted June 8, 1976.*]

[*Reimbursement of Recall Election Expenses*]

SEC. 18. A state officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally incurred. Another recall may not be initiated against the officer until six months after the election. [*New section adopted June 8, 1976.*]

[*Recall of Local Officers*]

SEC. 19. The Legislature shall provide for recall of local officers. This section does not affect counties and cities whose charters provide for recall. [*New section adopted June 8, 1976.*]

[*Terms of Elective Offices*]

SEC. 20. Terms of elective offices provided for by this Constitution, other than Members of the Legislature, commence on the Monday after January 1 following election. The election shall be held in the last even-numbered year before the term expires. [*New section adopted June 8, 1976.*]

ARTICLE III. [*Repealed November 7, 1972. See Article III, below.*]

ARTICLE III*

STATE OF CALIFORNIA

[*United States Constitution Supreme Law*]

SECTION 1. The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land. [*New section adopted November 7, 1972.*]

[*Boundaries of the State—Sacramento Seat of Government*]

SEC. 2. The boundaries of the State are those stated in the Constitution of 1849 as modified pursuant to statute. Sacramento is the capital of California. [*New section adopted November 7, 1972.*]

[*Separation of Powers*]

SEC. 3. The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution. [*New section adopted November 7, 1972.*]

* New Article III adopted November 7, 1972.

[*Administrative Agencies: Declaration Statute Unenforceable or Unconstitutional Prohibited*]

SEC. 3.5. An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

(b) To declare a statute unconstitutional;

(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations. [*New section adopted June 6, 1978.*]

[*Salaries of Elected State Officers—Salaries of Judges*]

SEC. 4. (a) Except as provided in subdivision (b), salaries of elected state officers may not be reduced during their term of office. Laws that set these salaries are appropriations.

(b) Beginning on January 1, 1981, the base salary of a judge of a court of record shall equal the annual salary payable as of July 1, 1980, for that office had the judge been elected in 1978. The Legislature may prescribe increases in those salaries during a term of office, and it may terminate prospective increases in those salaries at any time during a term of office, but it shall not reduce the salary of a judge during a term of office below the highest level paid during that term of office. Laws setting the salaries of judges shall not constitute an obligation of contract pursuant to Section 9 of Article I or any other provision of law. [*As amended November 4, 1980.*]

[*Suits Against State*]

SEC. 5. Suits may be brought against the State in such manner and in such courts as shall be directed by law. [*New section adopted November 7, 1972.*]

[*Official State Language*]

SEC. 6. (a) Purpose.

English is the common language of the people of the United States of America and the State of California. This section is intended to preserve, protect and strengthen the English language, and not to supersede any of the rights guaranteed to the people by this Constitution.

(b) English as the Official Language of California.

English is the official language of the State of California.

(c) Enforcement.

The Legislature shall enforce this section by appropriate legislation. The Legislature and officials of the State of California shall take all steps

necessary to insure that the role of English as the common language of the State of California is preserved and enhanced. The Legislature shall make no law which diminishes or ignores the role of English as the common language of the State of California.

(d) Personal Right of Action and Jurisdiction of Courts.

Any person who is a resident of or doing business in the State of California shall have standing to sue the State of California to enforce this section, and the Courts of record of the State of California shall have jurisdiction to hear cases brought to enforce this section. The Legislature may provide reasonable and appropriate limitations on the time and manner of suits brought under this section. [*New section adopted November 4, 1986. Initiative measure.*]

[*Retirement Benefits for Elected Constitutional Officers*]

SEC. 7. (a) The retirement allowance for any person, all of whose credited service in the Legislators' Retirement System was rendered or was deemed to have been rendered as an elective officer of the State whose office is provided for by the California Constitution, other than a judge and other than a Member of the Senate or Assembly, and all or any part of whose retirement allowance is calculated on the basis of the compensation payable to the officer holding the office which the member last held prior to retirement, or for the survivor or beneficiary of such a person, shall not be increased or affected in any manner by changes on or after November 5, 1986, in the compensation payable to the officer holding the office which the member last held prior to retirement.

(b) This section shall apply to any person, survivor, or beneficiary described in subdivision (a) who receives, or is receiving, from the Legislators' Retirement System a retirement allowance on or after November 5, 1986, all or any part of which allowance is calculated on the basis of the compensation payable to the officer holding the office which the member last held prior to retirement.

(c) It is the intent of the people, in adopting this section, to restrict retirement allowances to amounts reasonably to be expected by certain members and retired members of the Legislators' Retirement System and to preserve the basic character of earned retirement benefits while prohibiting windfalls and unforeseen advantages which have no relation to the real theory and objective of a sound retirement system. It is not the intent of this section to deny any member, retired member, survivor, or beneficiary a reasonable retirement allowance. Thus, this section shall not be construed as a repudiation of a debt nor the impairment of a contract for a substantial and reasonable retirement allowance from the Legislators' Retirement System.

(d) The people and the Legislature hereby find and declare that the dramatic increase in the retirement allowances of persons described in sub-

division (a) which would otherwise result when the compensation for those offices increases on November 5, 1986, or January 5, 1987, are not benefits which could have reasonably been expected. The people and the Legislature further find and declare that the Legislature did not intend to provide in its scheme of compensation for those offices such windfall benefits. [*New section adopted November 4, 1986.*]

[*California Citizens Compensation Commission*]

SEC. 8. (a) The California Citizens Compensation Commission is hereby created and shall consist of seven members appointed by the Governor. The commission shall establish the annual salary and the medical dental, insurance, and other similar benefits of state officers.

(b) The commission shall consist of the following persons:

(1) Three public members, one of whom has expertise in the area of compensation, such as an economist, market researcher, or personnel manager; one of whom is a member of a nonprofit public interest organization; and one of whom is representative of the general population and may include, among others, a retiree, homemaker, or person of median income. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974.

(2) Two members who have experience in the business community, one of whom is an executive of a corporation incorporated in this State which ranks among the largest private sector employers in the State based on the number of employees employed by the corporation in this State and one of whom is an owner of a small business in this State.

(3) Two members, each of whom is an officer or member of a labor organization.

(c) The Governor shall strive insofar as practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the State in appointing commission members.

(d) The Governor shall appoint commission members and designate a chairperson for the commission not later than 30 days after the effective date of this section. The terms of two of the initial appointees shall expire on December 31, 1992, two on December 31, 1994, and three on December 31, 1996, as determined by the Governor. Thereafter, the term of each member shall be six years. Within 15 days of any vacancy, the Governor shall appoint a person to serve the unexpired portion of the term.

(e) No current or former officer or employee of this State is eligible for appointment to the commission.

(f) Public notice shall be given of all meetings of the commission, and the meetings shall be open to the public.

(g) On or before December 3, 1990, the commission shall, by a single resolution adopted by a majority of the membership of the commission, establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in that resolution shall be effective on and after December 3, 1990.

Thereafter, at or before the end of each of each fiscal year, the commission shall, by a single resolution adopted by a majority of the membership of the commission, adjust the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in the resolution shall be effective on and after the first Monday of the next December.

(h) In establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits, the commission shall consider all of the following:

(1) The amount of time directly or indirectly related to the performance of the duties, functions, and services of a state officer.

(2) The amount of the annual salary and the medical, dental, insurance, and other similar benefits for other elected and appointed officers and officials in this State with comparable responsibilities, the judiciary, and, to the extent practicable, the private sector, recognizing, however, that state officers do not receive, and do not expect to receive, compensation at the same levels as individuals in the private sector with comparable experience and responsibilities.

(3) The responsibility and scope of authority of the entity in which the state officer serves.

(i) Until a resolution establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits for state officers takes effect, each state officer shall continue to receive the same annual salary and the medical, dental, insurance, and other similar benefits received previously.

(j) All commission members shall receive their actual and necessary expenses, including travel expenses, incurred in the performance of their duties. Each member shall be compensated at the same rate as members, other than the chairperson, of the Fair Political Practices Commission, or its successor, for each day engaged in official duties, not to exceed 45 days per year.

(k) It is the intent of the Legislature that the creation of the commission should not generate new state costs for staff and services. The Department of Personnel Administration, the Board of Administration of the Public Employees' Retirement System, or other appropriate agencies, or their successors, shall furnish, from existing resources, staff and services to the commission as needed for the performance of its duties.

(*l*) ''State officer,'' as used in this section, means the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner,

Secretary of State, Superintendent of Public Instruction, Treasurer, member of the State Board of Equalization, and Member of the Legislature. [*New section adopted June 5, 1990.*]

[*Sale of Surplus State Property*]

SEC. 9. The proceeds from the sale of surplus state property occurring on or after the effective date of this section, and any proceeds from the previous sale of surplus state property that have not been expended or encumbered as of that date, shall be used to pay the principal and interest on bonds issued pursuant to the Economic Recovery Bond Act authorized at the March 2, 2004, statewide primary election. Once the principal and interest on those bonds are fully paid, the proceeds from the sale of surplus state property shall be deposited into the Special Fund for Economic Uncertainties, or any successor fund. For purposes of this section, surplus state property does not include property purchased with revenues described in Article XIX or any other special fund moneys. [*New section adopted November 2, 2004.*]

ARTICLE IV

LEGISLATIVE

[*Heading as amended November 8, 1966.*]

SECTION 1. [*Repealed November 8, 1966. See Section 1, below.*]

[*Legislative Power*]

SECTION 1. The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum. [*New section adopted November 8, 1966.*]

SEC. 1a. [*Renumbered Section 20 of Article XIII and amended November 8, 1966.*]

SEC. 1b. [*Repealed November 8, 1966.*]

SEC. 1c. [*Repealed November 8, 1966.*]

SEC. 1d. [*Repealed November 8, 1966.*]

[*Legislators—Limitation on Incumbency—Restriction of Retirement Benefits— Limitation of Staff and Support Services—Number of Terms*]

SEC. 1.5. The people find and declare that the Founding Fathers established a system of representative government based upon free, fair, and competitive elections. The increased concentration of political power in the hands of incumbent representatives has made our electoral system less free, less competitive, and less representative.

The ability of legislators to serve unlimited number of terms, to establish their own retirement system, and to pay for staff and support services at state expense contribute heavily to the extremely high number of incumbents who are reelected. These unfair incumbent advantages discourage qualified candidates from seeking public office and create a class of career politicians, instead of the citizen representatives envisioned by the Founding Fathers. These career politicians become representatives of the bureaucracy, rather than of the people whom they are elected to represent.

To restore a free and democratic system of fair elections, and to encourage qualified candidates to seek public office, the people find and declare that the powers of incumbency must be limited. Retirement benefits must be restricted, state-financed incumbent staff and support services limited, and limitations placed upon the number of terms which may be served. [*New section adopted November 6, 1990. Initiative measure.*]

[*Senate and Assembly—Membership—Elections—Number of Terms—Qualifications—Vacancies*]

SEC. 2. (a) The Senate has a membership of 40 Senators elected for 4-year terms, 20 to begin every 2 years. No Senator may serve more than 2 terms.

The Assembly has a membership of 80 members elected for 2-year terms. No member of the Assembly may serve more than 3 terms.

Their terms shall commence on the first Monday in December next following their election.

(b) Election of members of the Assembly shall be on the first Tuesday after the first Monday in November of even-numbered years unless otherwise prescribed by the Legislature. Senators shall be elected at the same time and places as members of the Assembly.

(c) A person is ineligible to be a member of the Legislature unless the person is an elector and has been a resident of the legislative district for one year, and a citizen of the United States and a resident of California for 3 years, immediately preceding the election.

(d) When a vacancy occurs in the Legislature the Governor immediately shall call an election to fill the vacancy. [*As amended November 6, 1990. Initiative measure.*]

[*Legislative Sessions—Regular and Special Sessions*]

SEC. 3. (a) The Legislature shall convene in regular session at noon on the first Monday in December of each even-numbered year and each house shall immediately organize. Each session of the Legislature shall adjourn sine die by operation of the Constitution at midnight on November 30 of the following even-numbered year.

(b) On extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session. When so assembled

it has power to legislate only on subjects specified in the proclamation but may provide for expenses and other matters incidental to the session. [*As amended June 8, 1976.*]

[*Legislators—Conflict of Interest—Prohibited Compensation—Earned Income*]

SEC. 4. (a) To eliminate any appearance of a conflict with the proper discharge of his or her duties and responsibilities, no Member of the Legislature may knowingly receive any salary, wages, commissions, or other similar earned income from a lobbyist or lobbying firm, as defined by the Political Reform Act of 1974, or from a person who, during the previous 12 months, has been under a contract with the Legislature. The Legislature shall enact laws that define earned income. However, earned income does not include any community property interest in the income of a spouse. Any Member who knowingly receives any salary, wages, commissions, or other similar earned income from a lobbyist employer, as defined by the Political Reform Act of 1974, may not, for a period of one year following its receipt, vote upon or make, participate in making, or in any way attempt to use his or her official position to influence an action or decision before the Legislature, other than an action or decision involving a bill described in subdivision (c) of Section 12 of this article, which he or she knows, or has reason to know, would have a direct and significant financial impact on the lobbyist employer and would not impact the public generally or a significant segment of the public in a similar manner. As used in this subdivision, ''public generally'' includes an industry, trade, or profession.

[*Legislators—Travel and Living Expenses*]

(b) Travel and living expenses for Members of the Legislature in connection with their official duties shall be prescribed by statute passed by rollcall vote entered in the journal, two-thirds of the membership of each house concurring. A Member may not receive travel and living expenses during the times that the Legislature is in recess for more than three calendar days, unless the Member is traveling to or from, or is in attendance at, any meeting of a committee of which he or she is a member, or a meeting, conference, or other legislative function or responsibility as authorized by the rules of the house of which he or she is a member, which is held at a location at least 20 miles from his or her place of residence.

[*Legislators—Retirement*]

(c) The Legislature may not provide retirement benefits based on any portion of a monthly salary in excess of five hundred dollars ($500) paid to any Member of the Legislature unless the Member receives the greater amount while serving as a Member in the Legislature. The Legislature may, prior to their retirement, limit the retirement benefits payable to Members of the Legislature who serve during or after the term commencing in 1967.

When computing the retirement allowance of a Member who serves in the Legislature during the term commencing in 1967 or later, allowance may be made for increases in cost of living if so provided by statute, but only with respect to increases in the cost of living occurring after retirement of the Member. However, the Legislature may provide that no Member shall be deprived of a cost of living adjustment based on a monthly salary of five hundred dollars ($500) which has accrued prior to the commencement of the 1967 Regular Session of the Legislature. [*As amended June 5, 1990.*]

[*Legislators—Retirement*]

SEC. 4.5. Notwithstanding any other provision of this Constitution or existing law, a person elected to or serving in the Legislature on or after November 1, 1990, shall participate in the Federal Social Security (Retirement, Disability, Health Insurance) Program and the State shall pay only the employer's share of the contribution necessary to such participation. No other pension or retirement benefit shall accrue as a result of service in the Legislature, such service not being intended as a career occupation. This Section shall not be construed to abrogate or diminish any vested pension or retirement benefit which may have accrued under an existing law to a person holding or having held office in the Legislature, but upon adoption of this Act no further entitlement to nor vesting in any existing program shall accrue to any such person, other than Social Security to the extent herein provided. [*New section adopted November 6, 1990. Initiative measure.*]

[*Legislators—Qualifications—Expulsion*]

SEC. 5. (a) Each house shall judge the qualifications and elections of its Members and, by rollcall vote entered in the journal, two thirds of the membership concurring, may expel a Member.

[*Legislators—Honoraria*]

(b) No Member of the Legislature may accept any honorarium. The Legislature shall enact laws that implement this subdivision.

[*Legislators—Gifts—Conflict of Interest*]

(c) The Legislature shall enact laws that ban or strictly limit the acceptance of a gift by a Member of the Legislature from any source if the acceptance of the gift might create a conflict of interest.

[*Legislators—Prohibited Compensation or Activity*]

(d) No Member of the Legislature may knowingly accept any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any state government board or agency. If a Member knowingly accepts any compensation for appearing, agreeing to

appear, or taking any other action on behalf of another person before any local government board or agency, the Member may not, for a period of one year following the acceptance of the compensation, vote upon or make, participate in making, or in any way attempt to use his or her official position to influence an action or decision before the Legislature, other than an action or decision involving a bill described in subdivision (c) of Section 12 of this article, which he or she knows, or has reason to know, would have a direct and significant financial impact on that person and would not impact the public generally or a significant segment of the public in a similar manner. As used in this subdivision, ''public generally'' includes an industry, trade, or profession. However, a Member may engage in activities involving a board or agency which are strictly on his or her own behalf, appear in the capacity of an attorney before any court or the Workers' Compensation Appeals Board, or act as an advocate without compensation or make an inquiry for information on behalf of a person before a board or agency. This subdivision does not prohibit any action of a partnership or firm of which the Member is a member if the Member does not share directly or indirectly in the fee, less any expenses attributable to that fee, resulting from that action.

[*Legislators—Lobbying*]

(e) The Legislature shall enact laws that prohibit a Member of the Legislature whose term of office commences on or after December 3, 1990, from lobbying, for compensation, as governed by the Political Reform Act of 1974, before the Legislature for 12 months after leaving office.

[*Legislators—Conflict of Interest*]

(f) The Legislature shall enact new laws, and strengthen the enforcement of existing laws, prohibiting Members of the Legislature from engaging in activities or having interests which conflict with the proper discharge of their duties and responsibilities. However, the people reserve to themselves the power to implement this requirement pursuant to Article II. [*As amended June 5, 1990. Subdivision (b) operative December 3, 1990.*]

SEC. 6. [*Repealed June 3, 1980. See Section 6, below.*]

[*Senatorial and Assembly Districts*]

SEC. 6. For the purpose of choosing members of the Legislature, the State shall be divided into 40 Senatorial and 80 Assembly districts to be called Senatorial and Assembly Districts. Each Senatorial district shall choose one Senator and each Assembly district shall choose one member of the Assembly. [*New section adopted June 3, 1980.*]

[*House Rules—Officers—Quorum*]

SEC. 7. (a) Each house shall choose its officers and adopt rules for its proceedings. A majority of the membership constitutes a quorum, but a smaller number may recess from day to day and compel the attendance of absent members.

[*Journals*]

(b) Each house shall keep and publish a journal of its proceedings. The rollcall vote of the members on a question shall be taken and entered in the journal at the request of 3 members present.

[*Public Proceedings—Closed Sessions*]

(c) (1) The proceedings of each house and the committees thereof shall be open and public. However, closed sessions may be held solely for any of the following purposes:

(A) To consider the appointment, employment, evaluation of performance, or dismissal of a public officer or employee, to consider or hear complaints or charges brought against a Member of the Legislature or other public officer or employee, or to establish the classification or compensation of an employee of the Legislature.

(B) To consider matters affecting the safety and security of Members of the Legislature or its employees or the safety and security of any buildings and grounds used by the Legislature.

(C) To confer with, or receive advice from, its legal counsel regarding pending or reasonably anticipated, or whether to initiate, litigation when discussion in open session would not protect the interests of the house or committee regarding the litigation.

(2) A caucus of the Members of the Senate, the Members of the Assembly, or the Members of both houses, which is composed of the members of the same political party, may meet in closed session.

(3) The Legislature shall implement this subdivision by concurrent resolution adopted by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by statute, and shall prescribe that, when a closed session is held pursuant to paragraph (1), reasonable notice of the closed session and the purpose of the closed session shall be provided to the public. If there is a conflict between a concurrent resolution and statute, the last adopted or enacted shall prevail.

[*Recess*]

(d) Neither house without the consent of the other may recess for more than 10 days or to any other place. [*As amended June 5, 1990. Subdivision (c) operative December 3, 1990.*]

[*Legislature—Total Aggregate Expenditures*]

SEC. 7.5. In the fiscal year immediately following the adoption of this Act, the total aggregate expenditures of the Legislature for the compensation of members and employees of, and the operating expenses and equipment for, the Legislature may not exceed an amount equal to nine hundred fifty thousand dollars ($950,000) per member for that fiscal year or 80 percent of the amount of money expended for those purposes in the preceding fiscal year, whichever is less. For each fiscal year thereafter, the total aggregate expenditures may not exceed an amount equal to that expended for those purposes in the preceding fiscal year, adjusted and compounded by an amount equal to the percentage increase in the appropriations limit for the State established pursuant to Article XIII B. [*New section adopted November 6, 1990. Initiative measure.*]

[*Bills and Statutes—30-day Waiting Period*]

SEC. 8. (a) At regular sessions no bill other than the budget bill may be heard or acted on by committee or either house until the 31st day after the bill is introduced unless the house dispenses with this requirement by rollcall vote entered in the journal, three fourths of the membership concurring.

[*Bills and Statutes—3 Readings*]

(b) The Legislature may make no law except by statute and may enact no statute except by bill. No bill may be passed unless it is read by title on 3 days in each house except that the house may dispense with this requirement by rollcall vote entered in the journal, two thirds of the membership concurring. No bill may be passed until the bill with amendments has been printed and distributed to the members. No bill may be passed unless, by rollcall vote entered in the journal, a majority of the membership of each house concurs.

[*Bills and Statutes—Effective Date*]

(c) (1) Except as provided in paragraphs (2) and (3) of this subdivision, a statute enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment of the statute and a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed.

(2) A statute, other than a statute establishing or changing boundaries of any legislative, congressional, or other election district, enacted by a bill passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, shall go into effect on January 1 next following the enactment date of the statute unless, before January 1, a copy of a referendum

petition affecting the statute is submitted to the Attorney General pursuant to subdivision (d) of Section 10 of Article II, in which event the statute shall go into effect on the 91st day after the enactment date unless the petition has been presented to the Secretary of State pursuant to subdivision (b) of Section 9 of Article II.

(3) Statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes shall go into effect immediately upon their enactment.

[*Bills and Statutes—Urgency Statutes*]

(d) Urgency statutes are those necessary for immediate preservation of the public peace, health, or safety. A statement of facts constituting the necessity shall be set forth in one section of the bill. In each house the section and the bill shall be passed separately, each by rollcall vote entered in the journal, two thirds of the membership concurring. An urgency statute may not create or abolish any office or change the salary, term, or duties of any office, or grant any franchise or special privilege, or create any vested right or interest. [*As amended June 5, 1990.*]

[*Ballot Measures—Application*]

SEC. 8.5. An act amending an initiative statute, an act providing for the issuance of bonds, or a constitutional amendment proposed by the Legislature and submitted to the voters for approval may not do either of the following:

(a) Include or exclude any political subdivision of the State from the application or effect of its provisions based upon approval or disapproval of the measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of that political subdivision.

(b) Contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure. [*New section adopted June 2, 1998.*]

SEC. 9. [*Repealed November 8, 1966. See Section 9, below.*]

[*Statutes—Title—Section*]

SEC. 9. A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended. [*New section adopted November 8, 1966.*]

[*Governor's Veto—Bill Introduction in Biennial Session—Fiscal Emergencies*]

SEC. 10. (a) Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if it is signed by the Governor. The

Governor may veto it by returning it with any objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it. If each house then passes the bill by rollcall vote entered in the journal, two-thirds of the membership concurring, it becomes a statute.

(b) (1) Any bill, other than a bill which would establish or change boundaries of any legislative, congressional, or other election district, passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, that is not returned within 30 days after that date becomes a statute.

(2) Any bill passed by the Legislature before September 1 of the second calendar year of the biennium of the legislative session and in the possession of the Governor on or after September 1 that is not returned on or before September 30 of that year becomes a statute.

(3) Any other bill presented to the Governor that is not returned within 12 days becomes a statute.

(4) If the Legislature by adjournment of a special session prevents the return of a bill with the veto message, the bill becomes a statute unless the Governor vetoes the bill within 12 days after it is presented by depositing it and the veto message in the office of the Secretary of State.

(5) If the 12th day of the period within which the Governor is required to perform an act pursuant to paragraph (3) or (4) of this subdivision is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday.

(c) Any bill introduced during the first year of the biennium of the legislative session that has not been passed by the house of origin by January 31 of the second calendar year of the biennium may no longer be acted on by the house. No bill may be passed by either house on or after September 1 of an even-numbered year except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, and bills passed after being vetoed by the Governor.

(d) The Legislature may not present any bill to the Governor after November 15 of the second calendar year of the biennium of the legislative session.

(e) The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill. The Governor shall append to the bill a statement of the items reduced or eliminated with the reasons for the action. The Governor shall transmit to the house originating the bill a copy of the statement and reasons. Items reduced or eliminated shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills.

(f) (1) If, following the enactment of the budget bill for the 2004–05 fiscal year or any subsequent fiscal year, the Governor determines that, for that fiscal year, General Fund revenues will decline substantially below the estimate of General Fund revenues upon which the budget bill for that fiscal year, as enacted, was based, or General Fund expenditures will increase substantially above that estimate of General Fund revenues, or both, the Governor may issue a proclamation declaring a fiscal emergency and shall thereupon cause the Legislature to assemble in special session for this purpose. The proclamation shall identify the nature of the fiscal emergency and shall be submitted by the Governor to the Legislature, accompanied by proposed legislation to address the fiscal emergency.

(2) If the Legislature fails to pass and send to the Governor a bill or bills to address the fiscal emergency by the 45th day following the issuance of the proclamation, the Legislature may not act on any other bill, nor may the Legislature adjourn for a joint recess, until that bill or those bills have been passed and sent to the Governor.

(3) A bill addressing the fiscal emergency declared pursuant to this section shall contain a statement to that effect. [*As amended March 2, 2004.*]

[*Committees*]

SEC. 11. The Legislature or either house may by resolution provide for the selection of committees necessary for the conduct of its business, including committees to ascertain facts and make recommendations to the Legislature on a subject within the scope of legislative control. [*As amended November 7, 1972.*]

[*Governor's Budget—Budget Bill—Other Appropriations*]

SEC. 12. (a) Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided.

(b) The Governor and the Governor-elect may require a state agency, officer or employee to furnish whatever information is deemed necessary to prepare the budget.

(c) (1) The budget shall be accompanied by a budget bill itemizing recommended expenditures.

(2) The budget bill shall be introduced immediately in each house by the persons chairing the committees that consider the budget.

(3) The Legislature shall pass the budget bill by midnight on June 15 of each year.

(4) Until the budget bill has been enacted, the Legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted, except emergency bills recommended by the Governor or appropriations for the salaries and expenses of the Legislature.

(d) No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund of the State, except appropriations for the public schools, are void unless passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring.

(e) The Legislature may control the submission, approval, and enforcement of budgets and the filing of claims for all state agencies.

(f) For the 2004–05 fiscal year, or any subsequent fiscal year, the Legislature may not send to the Governor for consideration, nor may the Governor sign into law, a budget bill that would appropriate from the General Fund, for that fiscal year, a total amount that, when combined with all appropriations from the General Fund for that fiscal year made as of the date of the budget bill's passage, and the amount of any General Fund moneys transferred to the Budget Stabilization Account for that fiscal year pursuant to Section 20 of Article XVI, exceeds General Fund revenues for that fiscal year estimated as of the date of the budget bill's passage. That estimate of General Fund revenues shall be set forth in the budget bill passed by the Legislature. [*As amended March 2, 2004.*]

[*Legislators—Ineligible for Certain Offices*]

SEC. 13. A member of the Legislature may not, during the term for which the member is elected, hold any office or employment under the State other than an elective office. [*As amended November 5, 1974.*]

SEC. 14. [*Repealed November 8, 1966. See Section 14, below.*]

[*Members—Not Subject to Civil Process*]

SEC. 14. A member of the Legislature is not subject to civil process during a session of the Legislature or for 5 days before and after a session. [*New section adopted November 8, 1966.*]

[*Influencing Action or Vote of a Member—Felony*]

SEC. 15. A person who seeks to influence the vote or action of a member of the Legislature in the member's legislative capacity by bribery, promise of reward, intimidation, or other dishonest means, or a member of the Legislature so influenced, is guilty of a felony. [*As amended November 5, 1974.*]

[*Uniform Operation of General Laws—Special Statute—Invalid*]

SEC. 16. (a) All laws of a general nature have uniform operation.

(b) A local or special statute is invalid in any case if a general statute can be made applicable. [*As amended November 5, 1974.*]

SEC. 17. [*Repealed November 8, 1966. See Section 17, below.*]

[*Grant of Extra Compensation or Allowance Prohibited*]

SEC. 17. The Legislature has no power to grant, or to authorize a city, county, or other public body to grant, extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or to authorize the payment of a claim against the State or a city, county, or other public body under an agreement made without authority of law. [*New section adopted November 8, 1966.*]

SEC. 18. [*Repealed November 8, 1966. See Section 18, below.*]

[*Impeachment*]

SEC. 18. (a) The Assembly has the sole power of impeachment. Impeachments shall be tried by the Senate. A person may not be convicted unless, by rollcall vote entered in the journal, two thirds of the membership of the Senate concurs.

(b) State officers elected on a statewide basis, members of the State Board of Equalization, and judges of state courts are subject to impeachment for misconduct in office. Judgment may extend only to removal from office and disqualification to hold any office under the State, but the person convicted or acquitted remains subject to criminal punishment according to law. [*New section adopted November 8, 1966.*]

[*Lotteries—Horse Races Regulated—Bingo Games and Raffles for Charitable Purposes—Gaming on Tribal Lands*]

SEC. 19. (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c) Notwithstanding subdivision (a), the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

(d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.

(e) The Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.

(f)* Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

(f)† Notwithstanding subdivision (a), the Legislature may authorize private, nonprofit, eligible organizations, as defined by the Legislature, to conduct raffles as a funding mechanism to provide support for their own or another private, nonprofit, eligible organization's beneficial and charitable works, provided that (1) at least 90 percent of the gross receipts from the raffle go directly to beneficial or charitable purposes in California, and (2) any person who receives compensation in connection with the operation of a raffle is an employee of the private nonprofit organization that is conducting the raffle. The Legislature, two-thirds of the membership of each house concurring, may amend the percentage of gross receipts required by this subdivision to be dedicated to beneficial or charitable purposes by means of a statute that is signed by the Governor. [*As amended March 7, 2000.*]

SEC. 20. [*Repealed November 8, 1966. See Section 20, below.*]

[*Fish and Game—Districts and Commission*]

SEC. 20. (a) The Legislature may provide for division of the State into fish and game districts and may protect fish and game in districts or parts of districts.

(b) There is a Fish and Game Commission of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 6-year terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. The Legislature may delegate to the commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. A member of the commission may be removed by concurrent resolution adopted by each house, a majority of the membership concurring. [*New section adopted November 8, 1966.*]

[*War- or Enemy-Caused Disaster*]

SEC. 21. To meet the needs resulting from war-caused or enemy-caused disaster in California, the Legislature may provide for:

(a) Filling the offices of members of the Legislature should at least one fifth of the membership of either house be killed, missing, or disabled, until they are able to perform their duties or successors are elected.

* Ballot Proposition 1A (SCA 11) March 7, 2000.
† Ballot Proposition 17 (SCA 4) March 7, 2000.

(b) Filling the office of Governor should the Governor be killed, missing, or disabled, until the Governor or the successor designated in this Constitution is able to perform the duties of the office of Governor or a successor is elected.

(c) Convening the Legislature.

(d) Holding elections to fill offices that are elective under this Constitution and that are either vacant or occupied by persons not elected thereto.

(e) Selecting a temporary seat of state or county government. [*As amended November 5, 1974.*]

[*Accountability—Session Goals and Objectives*]

SEC. 22. It is the right of the people to hold their legislators accountable. To assist the people in exercising this right, at the convening of each regular session of the Legislature, the President pro Tempore of the Senate, the Speaker of the Assembly, and the minority leader of each house shall report to their house the goals and objectives of that house during that session and, at the close of each regular session, the progress made toward meeting those goals and objectives. [*New section adopted June 5, 1990.*]

SEC. 22a. [*Repealed November 8, 1966.*]

SEC. 23. [*Renumbered Section 9 of Article II June 8, 1976.*]

SEC. 23a. [*Repealed November 8, 1966.*]

SEC. 23b. [*Repealed November 8, 1966.*]

SEC. 24. [*Renumbered Section 10 of Article II June 8, 1976.*]

SEC. 25. [*Renumbered Section 11 of Article II June 8, 1976.*]

SEC. 25a. [*Repealed November 8, 1966.*]

SEC. 25½. [*Repealed November 8, 1966.*]

SEC. 25⅝. [*Renumbered Section 22 of Article XIII and amended November 8, 1966.*]

SEC. 25¾. [*Renumbered Section 25.7 and amended November 6, 1962.*]

SEC. 25.7. [*Repealed November 8, 1966.*]

SEC. 26. [*Renumbered Section 12 of Article II June 8, 1976.*]

SEC. 27. [*Repealed June 3, 1980.*]

[*State Capitol Maintenance—Appropriations*]

SEC. 28. (a) Notwithstanding any other provision of this Constitution, no bill shall take effect as an urgency statute if it authorizes or contains an appropriation for either (1) the alteration or modification of the color, detail, design, structure or fixtures of the historically restored areas of the first, second, and third floors and the exterior of the west wing of the

State Capitol from that existing upon the completion of the project of restoration or rehabilitation of the building conducted pursuant to Section 9124 of the Government Code as such section read upon the effective date of this section, or (2) the purchase of furniture of different design to replace that restored, replicated, or designed to conform to the historic period of the historically restored areas specified above, including the legislators' chairs and desks in the Senate and Assembly Chambers.

(b) No expenditures shall be made in payment for any of the purposes described in subdivision (a) of this section unless funds are appropriated expressly for such purposes.

(c) This section shall not apply to appropriations or expenditures for ordinary repair and maintenance of the State Capitol building, fixtures and furniture. [*New Section adopted June 3, 1980.*]

SEC. 29. [*Renumbered Section 23 of Article XIII and amended November 8, 1966.*]

SEC. 30. [*Renumbered Section 24 of Article XIII and amended November 8, 1966.*]

SEC. 31. [*Renumbered Section 25 of Article XIII and amended November 8, 1966.*]

SEC. 31a. [*Renumbered Section 26 of Article XIII and amended November 8, 1966.*]

SEC. 31b. [*As adopted by Assembly Constitutional Amendment 14 of 1931, repealed November 6, 1956.*]

SEC. 31b. [*As adopted November 8, 1932, renumbered Section 27 of Article XIII and amended November 8, 1966.*]

SEC. 31c. [*As adopted November 3, 1936, renumbered Section 28 of Article XIII and amended November 8, 1966.*]

SEC. 31c. [*As adopted November 3, 1942, repealed November 6, 1956.*]

SEC. 31d. [*Repealed November 6, 1956.*]

SEC. 32. [*Repealed November 8, 1966.*]

SEC. 33. [*Repealed November 8, 1966.*]

SEC. 34. [*Repealed November 8, 1966.*]

SEC. 34a. [*Repealed November 8, 1966.*]

SEC. 35. [*Repealed November 8, 1966.*]

SEC. 36. [*Repealed November 8, 1966.*]

SEC. 37. [*Repealed November 8, 1966.*]

SEC. 38. [*Repealed November 8, 1966.*]

ARTICLE V. [*Repealed November 8, 1966. See Article V, below.*]

ARTICLE V*

EXECUTIVE

[*Executive Power Vested in Governor*]

SECTION 1. The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed. [*As amended November 5, 1974.*]

[*Election—Eligibility—Number of Terms*]

SEC. 2. The Governor shall be elected every fourth year at the same time and places as members of the Assembly and hold office from the Monday after January 1 following the election until a successor qualifies. The Governor shall be an elector who has been a citizen of the United States and a resident of this State for 5 years immediately preceding the Governor's election. The Governor may not hold other public office. No Governor may serve more than 2 terms. [*As amended November 6, 1990. Initiative measure.*]

[*Report to Legislature—Recommendations*]

SEC. 3. The Governor shall report to the Legislature each calendar year on the condition of the State and may make recommendations. [*As amended November 7, 1972.*]

SEC. 4. [*Repealed November 8, 1966. See Section 4, below.*]

[*Information From Executive Officers, Etc.*]

SEC. 4. The Governor may require executive officers and agencies and their employees to furnish information relating to their duties. [*New section adopted November 8, 1966.*]

[*Filling Vacancies—Confirmation by Legislature*]

SEC. 5. (a) Unless the law otherwise provides, the Governor may fill a vacancy in office by appointment until a successor qualifies.

(b) Whenever there is a vacancy in the office of the Superintendent of Public Instruction, the Lieutenant Governor, Secretary of State, Controller, Treasurer, or Attorney General, or on the State Board of Equalization, the Governor shall nominate a person to fill the vacancy who shall take office upon confirmation by a majority of the membership of the Senate and a

* New Article V adopted November 8, 1966.

majority of the membership of the Assembly and who shall hold office for the balance of the unexpired term. In the event the nominee is neither confirmed nor refused confirmation by both the Senate and the Assembly within 90 days of the submission of the nomination, the nominee shall take office as if he or she had been confirmed by a majority of the Senate and Assembly; provided, that if such 90-day period ends during a recess of the Legislature, the period shall be extended until the sixth day following the day on which the Legislature reconvenes. [*As amended November 2, 1976.*]

SEC. 6. [*Repealed November 8, 1966. See Section 6, below.*]

[*Executive Assignment and Agency Reorganization*]

SEC. 6. Authority may be provided by statute for the Governor to assign and reorganize functions among executive officers and agencies and their employees, other than elective officers and agencies administered by elective officers. [*New section adopted November 8, 1966.*]

[*Commander of Militia*]

SEC. 7. The Governor is commander in chief of a militia that shall be provided by statute. The Governor may call it forth to execute the law. [*As amended November 5, 1974.*]

[*Reprieves—Pardons—Commutations*]

SEC. 8. (a) Subject to application procedures provided by statute, the Governor, on conditions the Governor deems proper, may grant a reprieve, pardon, and commutation, after sentence, except in case of impeachment. The Governor shall report to the Legislature each reprieve, pardon, and commutation granted, stating the pertinent facts and the reasons for granting it. The Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring.

(b) No decision of the parole authority of this State with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action. [*As amended November 8, 1988.*]

[*Lieutenant Governor—Qualifications—Casting Vote*]

SEC. 9. The Lieutenant Governor shall have the same qualifications as the Governor. The Lieutenant Governor is President of the Senate but has only a casting vote. [*As amended November 5, 1974.*]

[*Succession*]

SEC. 10. The Lieutenant Governor shall become Governor when a vacancy occurs in the office of Governor.

The Lieutenant Governor shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor or of a Governor-elect who fails to take office.

The Legislature shall provide an order of precedence after the Lieutenant Governor for succession to the office of Governor and for the temporary exercise of the Governor's functions.

The Supreme Court has exclusive jurisdiction to determine all questions arising under this section.

Standing to raise questions of vacancy or temporary disability is vested exclusively in a body provided by statute. [*As amended November 5, 1974.*]

[*Other State Officers—Election—Number of Terms*]

SEC. 11. The Lieutenant Governor, Attorney General, Controller, Secretary of State, and Treasurer shall be elected at the same time and places and for the same term as the Governor. No Lieutenant Governor, Attorney General, Controller, Secretary of State, or Treasurer may serve in the same office for more than 2 terms. [*As amended November 6, 1990. Initiative measure.*]

SEC. 12. [*Repealed June 5, 1990.*]

[*Attorney General—Chief Law Officer*]

SEC. 13. Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. The Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any

county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office. [*As amended November 5, 1974.*]

[*State Officers—Conflict of Interest—Prohibited Compensation—Earned Income*]

SEC. 14. (a) To eliminate any appearance of a conflict with the proper discharge of his or her duties and responsibilities, no state officer may knowingly receive any salary, wages, commissions, or other similar earned income from a lobbyist or lobbying firm, as defined by the Political Reform Act of 1974, or from a person who, during the previous 12 months, has been under a contract with the state agency under the jurisdiction of the state officer. The Legislature shall enact laws that define earned income. However, earned income does not include any community property interest in the income of a spouse. Any state officer who knowingly receives any salary, wages, commissions, or other similar earned income from a lobbyist employer, as defined by the Political Reform Act of 1974, may not, for a period of one year following its receipt, vote upon or make, participate in making, or in any way attempt to use his or her official position to influence an action or decision before the agency for which the state officer serves, other than an action or decision involving a bill described in subdivision (c) of Section 12 of Article IV, which he or she knows, or has reason to know, would have a direct and significant financial impact on the lobbyist employer and would not impact the public generally or a significant segment of the public in a similar manner. As used in this subdivision, ''public generally'' includes an industry, trade, or profession.

[*State Officers—Honoraria*]

(b) No state officer may accept any honorarium. The Legislature shall enact laws that implement this subdivision.

[*State Officers—Gifts—Conflict of Interest*]

(c) The Legislature shall enact laws that ban or strictly limit the acceptance of a gift by a state officer from any source if the acceptance of the gift might create a conflict of interest.

[*State Officers—Prohibited Compensation or Activity*]

(d) No state officer may knowingly accept any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any state government board or agency. If a state officer

knowingly accepts any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any local government board or agency, the state officer may not, for a period of one year following the acceptance of the compensation, make, participate in making, or in any way attempt to use his or her official position to influence an action or decision before the state agency for which the state officer serves, other than an action or decision involving a bill described in subdivision (c) of Section 12 of Article IV, which he or she knows, or has reason to know, would have a direct and significant financial impact on that person and would not impact the public generally or a significant segment of the public in a similar manner. As used in this subdivision, ''public generally'' includes an industry, trade, or profession. However, a state officer may engage in activities involving a board or agency which are strictly on his or her own behalf, appear in the capacity of an attorney before any court or the Workers' Compensation Appeals Board, or act as an advocate without compensation or make an inquiry for information on behalf of a person before a board or agency. This subdivision does not prohibit any action of a partnership or firm of which the state officer is a member if the state officer does not share directly or indirectly in the fee, less any expenses attributable to that fee, resulting from that action.

[*State Officers—Lobbying*]

(e) The Legislature shall enact laws that prohibit a state officer, or a secretary of an agency or director of a department appointed by the Governor, who has not resigned or retired from state service prior to January 7, 1991, from lobbying, for compensation, as governed by the Political Reform Act of 1974, before the executive branch of state government for 12 months after leaving office.

[*State Officer—Definition*]

(f) ''State officer,'' as used in this section, means the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, and member of the State Board of Equalization. [*New section adopted June 5, 1990. Subdivision (b) operative December 3, 1990.*]

SEC. 15. [*Repealed November 8, 1966.*]

SEC. 16. [*Repealed November 8, 1966.*]

SEC. 17. [*Repealed November 8, 1966.*]

SEC. 18. [*Repealed November 8, 1966.*]

SEC. 20. [*Repealed November 8, 1966.*]

SEC. 21. [*Repealed November 8, 1966.*]

SEC. 22. [*Repealed November 8, 1966.*]

ARTICLE VI. [*Repealed November 8, 1966. See Article VI, below.*]

ARTICLE VI*

JUDICIAL

[*Judicial Power Vested in Courts*]

SECTION 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts, all of which are courts of record. [*As amended November 5, 2002.*]

SEC. 1a. [*Repealed November 8, 1966.*]

SEC. 1b. [*Repealed November 8, 1966.*]

SEC. 1c. [*Repealed November 8, 1966.*]

[*Supreme Court—Composition*]

SEC. 2. The Supreme Court consists of the Chief Justice of California and 6 associate justices. The Chief Justice may convene the court at any time. Concurrence of 4 judges present at the argument is necessary for a judgment.

An acting Chief Justice shall perform all functions of the Chief Justice when the Chief Justice is absent or unable to act. The Chief Justice or, if the Chief Justice fails to do so, the court shall select an associate justice as acting Chief Justice. [*As amended November 5, 1974.*]

[*Judicial Districts—Courts of Appeal*]

SEC. 3. The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions. Each division consists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment.

An acting presiding justice shall perform all functions of the presiding justice when the presiding justice is absent or unable to act. The presiding justice or, if the presiding justice fails to do so, the Chief Justice shall select an associate justice of that division as acting presiding justice. [*As amended November 5, 1974.*]

[*Superior Courts*]

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

* New Article VI adopted November 8, 1966.

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division. [*As amended June 2, 1998.*]

SEC. 4a. [*Repealed November 8, 1966.*]

SEC. 4b. [*Repealed November 8, 1966.*]

SEC. 4c. [*Repealed November 8, 1966.*]

SEC. 4d. [*Repealed November 8, 1966.*]

SEC. 4e. [*Repealed November 8, 1966.*]

SEC. 4½. [*Repealed November 8, 1966.*]

SEC. 4¾. [*Repealed November 8, 1966.*]

SEC. 5. [*Repealed November 5, 2002.*]

SEC. 5.5. [*Repealed June 8, 1976.*]

[*Judicial Council—Membership and Powers*]

SEC. 6. (a) The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, three judges of courts of appeal, 10 judges of superior courts, two nonvoting court administrators, and any other nonvoting members as determined by the voting membership of the council, each appointed by the Chief Justice for a three-year term pursuant to procedures established by the council; four members of the State Bar appointed by its governing body for three-year terms; and one member of each house of the Legislature appointed as provided by the house.

(b) Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

(c) The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

(d) To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.

(e) The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

(f) Judges shall report to the council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned. [*As amended November 5, 2002.*]

SEC. 7. [*Repealed November 8, 1966. See Section 7, below.*]

[*Commission on Judicial Appointments—Membership*]

SEC. 7. The Commission on Judicial Appointments consists of the Chief Justice, the Attorney General, and the presiding justice of the court of appeal of the affected district or, if there are 2 or more presiding justices, the one who has presided longest or, when a nomination or appointment to the Supreme Court is to be considered, the presiding justice who has presided longest on any court of appeal. [*New section adopted November 8, 1966.*]

[*Commission on Judicial Performance—Membership*]

SEC. 8. (a) The Commission on Judicial Performance consists of one judge of a court of appeal two judges of superior courts, each appointed by the Supreme Court; two members of the State Bar of California who have practiced law in this State for 10 years, each appointed by the Governor; and six citizens who are not judges, retired judges, or members of the State Bar of California, two of whom shall be appointed by the Governor, two by the Senate Committee on Rules, and two by the Speaker of the Assembly. Except as provided in subdivisions (b) and (c), all terms are for four years. No member shall serve more than two four-year terms, or for more than a total of 10 years if appointed to fill a vacancy.

(b) Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power. Appointing powers may appoint members who are already serving on the commission prior to March 1, 1995, to a single two-year term, but may not appoint them to an additional term thereafter.

(c) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) Two members appointed by the Supreme Court to a term commencing March 1, 1995, shall each serve a term of two years and may be reappointed to one full term.

(2) One attorney appointed by the Governor to a term commencing March 1, 1995, shall serve a term of two years and may be reappointed to one full term.

(3) One citizen member appointed by the Governor to a term commencing March 1, 1995, shall serve a term of two years and may be reappointed to one full term.

(4) One member appointed by the Senate Committee on Rules to a term commencing March 1, 1995, shall serve a term of two years and may be reappointed to one full term.

(5) One member appointed by the Speaker of the Assembly to a term commencing March 1, 1995, shall serve a term of two years and may be reappointed to one full term.

(6) All other members shall be appointed to full four-year terms commencing March 1, 1995. [*As amended November 5, 2002.*]

SEC. 9. [*Repealed November 8, 1966. See Section 9, below.*]

[*State Bar*]

SEC. 9. The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record. [*New section adopted November 8, 1966.*]

SEC. 10. [*Repealed November 8, 1966. See Section 10, below.*]

[*Jurisdiction—Original*]

SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.

Superior courts have original jurisdiction in all other causes.

The court may make any comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause. [*As amended November 5, 2002.*]

SEC. 10a. [*Repealed November 8, 1966.*]

SEC. 10b. [*Repealed November 8, 1966.*]

[*Jurisdiction—Appellate*]

SEC. 11. (a) The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute. When appellate jurisdiction in civil causes is determined by the amount in con-

troversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.

(b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute.

(c) The Legislature may permit courts exercising appellate jurisdiction to take evidence and make findings of fact when jury trial is waived or not a matter of right. [*As amended June 2, 1998.*]

[*Transfer of Causes—Jurisdiction—Review of Decisions*]

SEC. 12. (a) The Supreme Court may, before decision, transfer to itself a cause in a court of appeal. It may, before decision, transfer a cause from itself to a court of appeal or from one court of appeal or division to another. The court to which a cause is transferred has jurisdiction.

(b) The Supreme Court may review the decision of a court of appeal in any cause.

(c) The Judicial Council shall provide, by rules of court, for the time and procedure for transfer and for review, including, among other things, provisions for the time and procedure for transfer with instructions, for review of all or part of a decision, and for remand as improvidently granted.

(d) This section shall not apply to an appeal involving a judgment of death. [*As amended November 6, 1984. Operative May 6, 1985.*]

[*Judgment—When Set Aside*]

SEC. 13. No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice. [*New section adopted November 8, 1966.*]

SEC. 14. [*Repealed November 8, 1966. See Section 14, below.*]

[*Supreme Court and Appellate Court—Published Opinions*]

SEC. 14. The Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person.

Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated. [*New section adopted November 8, 1966.*]

[*Judges—Eligibility*]

SEC. 15. A person is ineligible to be a judge of a court of record unless for 10 years immediately preceding selection, the person has been a member of the State Bar or served as a judge of a court of record in this State. [*As amended November 5, 2002.*]

SEC. 15.5. [*Repealed January 1, 1995.*]

[*Judges—Elections—Terms—Vacancies*]

SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

(b) Judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law. In the latter case the Legislature, by two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d), or by any other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of superior courts are six years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the second January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) (1) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.

(2) The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

(3) Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts. [*As amended November 5, 2002.*]

[*Judges—Restrictions, Other Employment, and Benefits*]

SEC. 17. A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office, except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office. A judge of a trial court of record may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

A judicial officer may not receive fines or fees for personal use.

A judicial officer may not earn retirement service credit from a public teaching position while holding judicial office. [*As amended November 8, 1988.*]

[*Judges—Discipline*]

SEC. 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a petition to the Supreme Court to review a determination by the Commission on Judicial Performance to remove or retire a judge.

(b) The Commission on Judicial Performance may disqualify a judge from acting as a judge, without loss of salary, upon notice of formal proceedings by the commission charging the judge with judicial misconduct or disability.

(c) The Commission on Judicial Performance shall suspend a judge from office without salary when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If the conviction is reversed, suspension terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final, the Commission on Judicial Performance shall remove the judge from office.

(d) Except as provided in subdivision (f), the Commission on Judicial Performance may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, or (2) censure a judge or former judge or remove a judge for

action occurring not more than 6 years prior to the commencement of the judge's current term or of the former judge's last term that constitutes willful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or (3) publicly or privately admonish a judge or former judge found to have engaged in an improper action or dereliction of duty. The commission may also bar a former judge who has been censured from receiving an assignment, appointment, or reference of work from any California state court. Upon petition by the judge or former judge, the Supreme Court may, in its discretion, grant review of a determination by the commission to retire, remove, censure, admonish, or disqualify pursuant to subdivision (b) a judge or former judge. When the Supreme Court reviews a determination of the commission, it may make an independent review of the record. If the Supreme Court has not acted within 120 days after granting the petition, the decision of the commission shall be final.

(e) A judge retired by the commission shall be considered to have retired voluntarily. A judge removed by the commission is ineligible for judicial office, including receiving an assignment, appointment, or reference of work from any California state court, and pending further order of the court is suspended from practicing law in this State. The State Bar may institute appropriate attorney disciplinary proceedings against any judge who retires or resigns from office with judicial disciplinary charges pending.

(f) A determination by the Commission on Judicial Performance to admonish or censure a judge or former judge of the Supreme Court or remove or retire a judge of the Supreme Court shall be reviewed by a tribunal of 7 court of appeal judges selected by lot.

(g) No court, except the Supreme Court, shall have jurisdiction in a civil action or other legal proceeding of any sort brought against the commission by a judge. Any request for injunctive relief or other provisional remedy shall be granted or denied within 90 days of the filing of the request for relief. A failure to comply with the time requirements of this section does not affect the validity of commission proceedings.

(h) Members of the commission, the commission staff, and the examiners and investigators employed by the commission shall be absolutely immune from suit for all conduct at any time in the course of their official duties. No civil action may be maintained against a person, or adverse employment action taken against a person, by any employer, public or private, based on statements presented by the person to the commission.

(i) The Commission on Judicial Performance shall make rules implementing this section, including, but not limited to, the following:

(1) The commission shall make rules for the investigation of judges. The commission may provide for the confidentiality of complaints to and investigations by the commission.

(2) The commission shall make rules for formal proceedings against judges when there is cause to believe there is a disability or wrongdoing within the meaning of subdivision (d).

(j) When the commission institutes formal proceedings, the notice of charges, the answer, and all subsequent papers and proceedings shall be open to the public for all formal proceedings instituted after February 28, 1995.

(k) The commission may make explanatory statements.

(*l*) The budget of the commission shall be separate from the budget of any other state agency or court.

(m) The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics. [*As amended November 8, 1994. Operative March 1, 1995.*]

[*Subordinate Judicial Officers—Discipline*]

SEC. 18.1. The Commission on Judicial Performance shall exercise discretionary jurisdiction with regard to the oversight and discipline of subordinate judicial officers, according to the same standards, and subject to review upon petition to the Supreme Court, as specified in Section 18.

No person who has been found unfit to serve as a subordinate judicial officer after a hearing before the Commission on Judicial Performance shall have the requisite status to serve as a subordinate judicial officer.

This section does not diminish or eliminate the responsibility of a court to exercise initial jurisdiction to discipline or dismiss a subordinate judicial officer as its employee. [*New section adopted June 2, 1998.*]

[*Disciplined Judge Under Consideration for Judicial Appointment*]

SEC. 18.5. (a) Upon request, the Commission on Judicial Performance shall provide to the Governor of any State of the Union the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission's action, with respect to any applicant whom the Governor of any State of the Union indicates is under consideration for any judicial appointment.

(b) Upon request, the Commission on Judicial Performance shall provide the President of the United States the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to

a full understanding of the commission's action, with respect to any applicant whom the President indicates is under consideration for any federal judicial appointment.

(c) Upon request, the Commission on Judicial Performance shall provide the Commission on Judicial Appointments the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission action, with respect to any applicant whom the Commission on Judicial Appointments indicates is under consideration for any judicial appointment.

(d) All information released under this section shall remain confidential and privileged.

(e) Notwithstanding subdivision (d), any information released pursuant to this section shall also be provided to the applicant about whom the information was requested.

(f) ''Private admonishment'' refers to a disciplinary action against a judge by the Commission on Judicial Performance as authorized by subdivision (c) of Section 18 of Article VI, as amended November 8, 1988. [*New section adopted November 8, 1994. Operative March 1, 1995.*]

[*Judges—Compensation*]

SEC. 19. The Legislature shall prescribe compensation for judges of courts of record.

A judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision. [*As amended November 5, 1974.*]

SEC. 20. [*Repealed November 8, 1966. See Section 20, below.*]

[*Judges—Retirement—Disability*]

SEC. 20. The Legislature shall provide for retirement, with reasonable allowance, of judges of courts of record for age or disability. [*New section adopted November 8, 1966.*]

SEC. 21. [*Repealed November 8, 1966. See Section 21, below.*]

[*Temporary Judges*]

SEC. 21. On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause. [*New section adopted November 8, 1966.*]

[*Appointment of Officers—Subordinate Judicial Duties*]

SEC. 22. The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties. [*New section adopted November 8, 1966.*]

SEC. 23. [*Repealed November 8, 1966. See Section 23, below.*]

[*Superior and Municipal Court Consolidation*]

SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and 16, of this article, and the amendments to Section 16 of Article I, approved at the June 2, 1998, primary election is to permit the Legislature to provide for the abolition of the municipal courts and unify their operations within the superior courts. Notwithstanding Section 8 of Article IV, the implementation of, and orderly transition under, the provisions of the measure adding this section may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant franchises or special privileges, or create vested rights or interests, where otherwise permitted under this Constitution.

(b) When the superior and municipal courts within a county are unified, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges shall become judges of the superior court in that county. The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe appropriate education and training for judges with regard to trial court unification.

(c) Except as provided by statute to the contrary, in any county in which the superior and municipal courts become unified, the following shall occur automatically in each preexisting superior and municipal court:

(1) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.

(2) Preexisting court locations are retained as superior court locations.

(3) Preexisting court records become records of the superior court.

(4) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(5) Matters of a type previously within the appellate jurisdiction of the superior court remain within the jurisdiction of the appellate division of the superior court.

(6) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(7) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

(d) This section shall remain in effect only until January 1, 2007, and as of that date is repealed. [*As amended and repealed November 5, 2002. Repealed on January 1, 2007.*]

SEC. 24. [*Repealed November 8, 1966.*]

SEC. 26. [*Repealed November 8, 1966.*]

ARTICLE VII*

PUBLIC OFFICERS AND EMPLOYEES

[*Civil Service*]

SECTION 1. (a) The civil service includes every officer and employee of the State except as otherwise provided in this Constitution.

(b) In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination. [*New section adopted June 8, 1976.*]

[*Personnel Board—Membership and Compensation*]

SEC. 2. (a) There is a Personnel Board of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 10-year terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. A member may be removed by concurrent resolution adopted by each house, two-thirds of the membership of each house concurring.

(b) The board annually shall elect one of its members as presiding officer.

(c) The board shall appoint and prescribe compensation for an executive officer who shall be a member of the civil service but not a member of the board. [*New section adopted June 8, 1976.*]

[*Personnel Board—Duties*]

SEC. 3. (a) The board shall enforce the civil service statutes and, by majority vote of all its members, shall prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions.

(b) The executive officer shall administer the civil service statutes under rules of the board. [*New section adopted June 8, 1976.*]

* New Article VII adopted June 8, 1976.

[*Exempt Positions*]

SEC. 4. The following are exempt from civil service:

(a) Officers and employees appointed or employed by the Legislature, either house, or legislative committees.

(b) Officers and employees appointed or employed by councils, commissions or public corporations in the judicial branch or by a court of record or officer thereof.

(c) Officers elected by the people and a deputy and an employee selected by each elected officer.

(d) Members of boards and commissions.

(e) A deputy or employee selected by each board or commission either appointed by the Governor or authorized by statute.

(f) State officers directly appointed by the Governor with or without the consent or confirmation of the Senate and the employees of the Governor's office, and the employees of the Lieutenant Governor's office directly appointed or employed by the Lieutenant Governor.

(g) A deputy or employee selected by each officer, except members of boards and commissions, exempted under Section 4(f).

(h) Officers and employees of the University of California and the California State Colleges.

(i) The teaching staff of schools under the jurisdiction of the Department of Education or the Superintendent of Public Instruction.

(j) Member, inmate, and patient help in state homes, charitable or correctional institutions, and state facilities for mentally ill or retarded persons.

(k) Members of the militia while engaged in military service.

(*l*) Officers and employees of district agricultural associations employed less than 6 months in a calendar year.

(m) In addition to positions exempted by other provisions of this section, the Attorney General may appoint or employ six deputies or employees, the Public Utilities Commission may appoint or employ one deputy or employee, and the Legislative Counsel may appoint or employ two deputies or employees. [*New section adopted June 8, 1976.*]

[*Temporary Appointments*]

SEC. 5. A temporary appointment may be made to a position for which there is no employment list. No person may serve in one or more positions under temporary appointment longer than 9 months in 12 consecutive months. [*New section adopted June 8, 1976.*]

[*Veterans' Preferences—Special Rules*]

SEC. 6. (a) The Legislature may provide preferences for veterans and their surviving spouses.

(b) The board by special rule may permit persons in exempt positions, brought under civil service by constitutional provision, to qualify to continue in their positions.

(c) When the State undertakes work previously performed by a county, city, public district of this State or by a federal department or agency, the board by special rule shall provide for persons who previously performed this work to qualify to continue in their positions in the state civil service subject to such minimum standards as may be established by statute. [*New section adopted June 8, 1976.*]

[*Dual Office Holding*]

SEC. 7. A person holding a lucrative office under the United States or other power may not hold a civil office of profit. A local officer or postmaster whose compensation does not exceed 500 dollars per year or an officer in the militia or a member of a reserve component of the armed forces of the United States except where on active federal duty for more than 30 days in any year is not a holder of a lucrative office, nor is the holding of a civil office of profit affected by this military service. [*New section adopted June 8, 1976.*]

[*Disqualification From Holding Office or Serving on Jury—Free Suffrage*]

SEC. 8. (a) Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure personal election or appointment.

(b) Laws shall be made to exclude persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes from office or serving on juries. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice. [*New section adopted June 8, 1976.*]

[*Persons or Organizations Advocating Overthrow of Government*]

SEC. 9. Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

(a) Hold any office or employment under this State, including but not limited to the University of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State; or

(b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.

The Legislature shall enact such laws as may be necessary to enforce the provisions of this section. [*New section adopted June 8, 1976.*]

[*Elected Officials—Disqualification for Libelous or Slanderous Campaign Statements*]

SEC. 10. (a) No person who is found liable in a civil action for making libelous or slanderous statements against an opposing candidate during the course of an election campaign for any federal, statewide, Board of Equalization, or legislative office or for any county, city and county, city, district, or any other local elective office shall retain the seat to which he or she is elected, where it is established that the libel or slander was a major contributing cause in the defeat of an opposing candidate.

A libelous or slanderous statement shall be deemed to have been made by a person within the meaning of this section if that person actually made the statement or if the person actually or constructively assented to, authorized, or ratified the statement.

''Federal office,'' as used in this section means the office of United States Senator and Member of the House of Representatives; and to the extent that the provisions of this section do not conflict with any provision of federal law, it is intended that candidates seeking the office of United States Senator or Member of the House of Representatives comply with this section.

(b) In order to determine whether libelous or slanderous statements were a major contributing cause in the defeat of an opposing candidate, the trier of fact shall make a separate, distinct finding on that issue. If the trier of fact finds that libel or slander was a major contributing cause in the defeat of an opposing candidate and that the libelous or slanderous statement was made with knowledge that it was false or with reckless disregard of whether it was false or true, the person holding office shall be disqualified from or shall forfeit that office as provided in subdivision (d). The findings required by this section shall be in writing and shall be incorporated as part of the judgment.

(c) In a case where a person is disqualified from holding office or is required to forfeit an office under subdivisions (a) and (b), that disqualification or forfeiture shall create a vacancy in office, which vacancy shall be filled in the manner provided by law for the filling of a vacancy in that particular office.

(d) Once the judgment of liability is entered by the trial court and the time for filing a notice of appeal has expired, or all possibility of direct attack in the courts of this State has been finally exhausted, the person shall be disqualified from or shall forfeit the office involved in that election and shall have no authority to exercise the powers or perform the duties of the office.

(e) This section shall apply to libelous or slanderous statements made on or after the effective date of this section. [*New section adopted June 5, 1984.*]

[*Legislators' and Judges' Retirement Systems*]

SEC. 11. (a) The Legislators' Retirement System shall not pay any unmodified retirement allowance or its actuarial equivalent to any person who on or after January 1, 1987, entered for the first time any state office for which membership in the Legislators' Retirement System was elective or to any beneficiary or survivor of such a person, which exceeds the higher of (1) the salary receivable by the person currently serving in the office in which the retired person served or (2) the highest salary that was received by the retired person while serving in that office.

(b) The Judges' Retirement System shall not pay any unmodified retirement allowance or its actuarial equivalent to any person who on or after January 1, 1987, entered for the first time any judicial office subject to the Judges' Retirement System or to any beneficiary or survivor of such a person, which exceeds the higher of (1) the salary receivable by the person currently serving in the judicial office in which the retired person served or (2) the highest salary that was received by the retired person while serving in that judicial office.

(c) The Legislature may define the terms used in this section.

(d) If any part of this measure or the application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which reasonably can be given effect without the invalid provision or application. [*As amended November 6, 1990. Initiative measure.*]

ARTICLE VIII. [*Repealed November 8, 1966.*]

ARTICLE IX

EDUCATION

[*Legislative Policy*]

SECTION 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

[*Superintendent of Public Instruction—Election—Date of Office—Number of Terms*]

SEC. 2. A Superintendent of Public Instruction shall be elected by the qualified electors of the State at each gubernatorial election. The Superintendent of Public Instruction shall enter upon the duties of the office on the first Monday after the first day of January next succeeding each gu-

bernatorial election. No Superintendent of Public Instruction may serve more than 2 terms. [*As amended November 6, 1990. Initiative measure.*]

[*Deputy and Associate Superintendents of Public Instruction*]

SEC. 2.1. The State Board of Education, on nomination of the Superintendent of Public Instruction, shall appoint one Deputy Superintendent of Public Instruction and three Associate Superintendents of Public Instruction who shall be exempt from state civil service and whose terms of office shall be four years.

This section shall not be construed as prohibiting the appointment, in accordance with law, of additional Associate Superintendents of Public Instruction subject to state civil service. [*New section adopted November 5, 1946.*]

[*County Superintendents of Schools*]

SEC. 3. A Superintendent of Schools for each county may be elected by the qualified electors thereof at each gubernatorial election or may be appointed by the county board of education, and the manner of the selection shall be determined by a majority vote of the electors of the county voting on the question; provided, that two or more counties may, by an election conducted pursuant to Section 3.2 of this article, unite for the purpose of electing or appointing one joint superintendent for the counties so uniting. [*As amended November 2, 1976.*]

[*County Superintendents of Schools—Qualifications and Salaries*]

SEC. 3.1. (a) Notwithstanding any provision of this Constitution to the contrary, the Legislature shall prescribe the qualifications required of county superintendents of schools, and for these purposes shall classify the several counties in the State.

(b) Notwithstanding any provision of this Constitution to the contrary, the county board of education or joint county board of education, as the case may be, shall fix the salary of the county superintendent of schools or the joint county superintendent of schools, respectively. [*As amended November 2, 1976.*]

[*Joint County Board of Education—Joint County Superintendent of Schools*]

SEC. 3.2. Notwithstanding any provision of this Constitution to the contrary, any two or more chartered counties, or nonchartered counties, or any combination thereof, may, by a majority vote of the electors of each such county voting on the proposition at an election called for that purpose in each such county, establish one joint board of education and one joint county superintendent of schools for the counties so uniting. A joint county board of education and a joint county superintendent of schools

shall be governed by the general statutes and shall not be governed by the provisions of any county charter. [*New section adopted November 2, 1976.*]

[*County Boards of Education—Qualifications and Terms of Office*]

SEC. 3.3. Except as provided in Section 3.2 of this article, it shall be competent to provide in any charter framed for a county under any provision of this Constitution, or by the amendment of any such charter, for the election of the members of the county board of education of such county and for their qualifications and terms of office. [*As amended November 2, 1976.*]

SEC. 4. [*Repealed November 3, 1964.*]

[*Common School System*]

SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

[*Public Schools—Salaries*]

SEC. 6. Each person, other than a substitute employee, employed by a school district as a teacher or in any other position requiring certification qualifications shall be paid a salary which shall be at the rate of an annual salary of not less than twenty-four hundred dollars ($2,400) for a person serving full time, as defined by law.

[*Public School System*]

The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and state colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them. No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System.

[*Support of Public School System—State Aid*]

The Legislature shall add to the State School Fund such other means from the revenues of the State as shall provide in said fund for apportionment in each fiscal year, an amount not less than one hundred eighty dollars ($180) per pupil in average daily attendance in the kindergarten schools, elementary schools, secondary schools, and technical schools in the Public School System during the next preceding fiscal year.

The entire State School Fund shall be apportioned in each fiscal year in such manner as the Legislature may provide, through the school districts

and other agencies maintaining such schools, for the support of, and aid to, kindergarten schools, elementary schools, secondary schools, and technical schools except that there shall be apportioned to each school district in each fiscal year not less than one hundred twenty dollars ($120) per pupil in average daily attendance in the district during the next preceding fiscal year and except that the amount apportioned to each school district in each fiscal year shall be not less than twenty-four hundred dollars ($2,400).

Solely with respect to any retirement system provided for in the charter of any county or city and county pursuant to the provisions of which the contributions of, and benefits to, certificated employees of a school district who are members of such system are based upon the proportion of the salaries of such certificated employees contributed by said county or city and county, all amounts apportioned to said county or city and county, or to school districts therein, pursuant to the provisions of this section shall be considered as though derived from county or city and county school taxes for the support of county and city and county government and not money provided by the State within the meaning of this section. [*As amended November 5, 1974.*]

[*School Districts—Bonds*]

SEC. 6½. Nothing in this Constitution contained shall forbid the formation of districts for school purposes situate in more than one county or the issuance of bonds by such districts under such general laws as have been or may hereafter be prescribed by the Legislature; and the officers mentioned in such laws shall be authorized to levy and assess such taxes and perform all such other acts as may be prescribed therein for the purpose of paying such bonds and carrying out the other powers conferred upon such districts; *provided,* that all such bonds shall be issued subject to the limitations prescribed in section eighteen† of article eleven hereof. [*New section adopted November 7, 1922.*]

[*Boards of Education*]

SEC. 7. The Legislature shall provide for the appointment or election of the State Board of Education and a board of education in each county or for the election of a joint county board of education for two or more counties. [*As amended November 2, 1976.*]

[*Free Textbooks*]

SEC. 7.5. The State Board of Education shall adopt textbooks for use in grades one through eight throughout the State, to be furnished without cost as provided by statute. [*New section adopted June 2, 1970.*]

† Former Section 18 of Article XI added to Article XIII as Section 40, June 2, 1970 and repealed November 5, 1974.

[*Sectarian Schools—Public Money—Doctrines*]

SEC. 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

[*University of California*]

SEC. 9. (a) The University of California shall constitute a public trust, to be administered by the existing corporation known as "The Regents of the University of California," with full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services. Said corporation shall be in form a board composed of seven ex officio members, which shall be: the Governor, the Lieutenant Governor, the Speaker of the Assembly, the Superintendent of Public Instruction, the president and the vice president of the alumni association of the university and the acting president of the university, and 18 appointive members appointed by the Governor and approved by the Senate, a majority of the membership concurring; provided, however that the present appointive members shall hold office until the expiration of their present terms.

(b) The terms of the members appointed prior to November 5, 1974, shall be 16 years; the terms of two appointive members to expire as heretofore on March 1st of every even-numbered calendar year, and two members shall be appointed for terms commencing on March 1, 1976, and on March 1 of each year thereafter; provided that no such appointments shall be made for terms to commence on March 1, 1979, or on March 1 of each fourth year thereafter, to the end that no appointment to the regents for a newly commencing term shall be made during the first year of any gubernatorial term of office. The terms of the members appointed for terms commencing on and after March 1, 1976, shall be 12 years. During the period of transition until the time when the appointive membership is comprised exclusively of persons serving for terms of 12 years, the total number of appointive members may exceed the numbers specified in the preceeding paragraph.

In case of any vacancy, the term of office of the appointee to fill such vacancy, who shall be appointed by the Governor and approved by the Senate, a majority of the membership concurring, shall be for the balance of the term for which such vacancy exists.

(c) The members of the board may, in their discretion, following procedures established by them and after consultation with representatives of faculty and students of the university, including appropriate officers of the academic senate and student governments, appoint to the board either or both of the following persons as members with all rights of participation: a member of the faculty at a campus of the university or of another institution of higher education; a person enrolled as a student at a campus of the university for each regular academic term during his service as a member of the board. Any person so appointed shall serve for not less than one year commencing on July 1.

(d) Regents shall be able persons broadly reflective of the economic, cultural, and social diversity of the State, including ethnic minorities and women. However, it is not intended that formulas or specific ratios be applied in the selection of regents.

(e) In the selection of the Regents, the Governor shall consult an advisory committee composed as follows: The Speaker of the Assembly and two public members appointed by the Speaker, the President Pro Tempore of the Senate and two public members appointed by the Rules Committee of the Senate, two public members appointed by the Governor, the chairman of the regents of the university, an alumnus of the university chosen by the alumni association of the university, a student of the university chosen by the Council of Student Body Presidents, and a member of the faculty of the university chosen by the academic senate of the university. Public members shall serve for four years, except that one each of the initially appointed members selected by the Speaker of the Assembly, the President Pro Tempore of the Senate, and the Governor shall be appointed to serve for two years; student, alumni, and faculty members shall serve for one year and may not be regents of the university at the time of their service on the advisory committee.

(f) The Regents of the University of California shall be vested with the legal title and the management and disposition of the property of the university and of property held for its benefit and shall have the power to take and hold, either by purchase or by donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the university or incidentally to its conduct; provided, however, that sales of university real property shall be subject to such competitive bidding procedures as may be provided by statute. Said corporation shall also have all the powers necessary or convenient for the effective administration of its trust, including the power to sue and to be sued, to use a seal, and to delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise. The Regents shall receive all funds derived from the sale of lands pursuant to the act of Congress of July 2, 1862, and any subsequent acts amendatory thereof. The university shall be entirely independent of all political or sec-

tarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, and no person shall be debarred admission to any department of the university on account of race, religion, ethnic heritage, or sex.

(g) Meetings of the Regents of the University of California shall be public, with exceptions and notice requirements as may be provided by statute. [*As amended November 2, 1976.*]

SEC. 10. [*Repealed November 5, 1974.*]

SEC. 11. [*Repealed November 5, 1974.*]

SEC. 12. [*Repealed November 5, 1974.*]

SEC. 13. [*Repealed November 5, 1974.*]

[*School District Incorporation and Organization—Governing Board Powers*]

SEC. 14. The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and community college districts, of every kind and class, and may classify such districts.

The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established. [*As amended November 7, 1972. Operative July 1, 1973.*]

SEC. 15. [*Repealed November 5, 1974.*]

[*Boards of Education—City Charter Provisions*]

SEC. 16. (a) It shall be competent, in all charters framed under the authority given by Section 5 of Article XI, to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, for their qualifications, compensation and removal, and for the number which shall constitute any one of such boards.

[*Charter Amendments—Approval by Voters*]

(b) Notwithstanding Section 3 of Article XI, when the boundaries of a school district or community college district extend beyond the limits of a city whose charter provides for any or all of the foregoing with respect to the members of its board of education, no charter amendment effecting a change in the manner in which, the times at which, or the terms for which the members of the board of education shall be elected or appointed, for their qualifications, compensation, or removal, or for the number which shall constitute such board, shall be adopted unless it is submitted to and approved by a majority of all the qualified electors of the school district or community college district voting on the question. Any such amendment,

and any portion of a proposed charter or a revised charter which would establish or change any of the foregoing provisions respecting a board of education, shall be submitted to the electors of the school district or community college district as one or more separate questions. The failure of any such separate question to be approved shall have the result of continuing in effect the applicable existing law with respect to that board of education. [*As amended June 6, 1978.*]

ARTICLE X*

WATER

[*State's Right of Eminent Domain*]

SECTION 1. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State. [*New section adopted June 8, 1976.*]

[*Conservation and Beneficial Use of Water—Riparian Rights*]

SEC. 2. It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use, or as depriving any appropriator of water to which the appropriator is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained. [*New section adopted June 8, 1976.*]

* New Article X adopted June 8, 1976.

[*Tidelands*]

SEC. 3. All tidelands within two miles of any incorporated city, city and county, or town in this State, and fronting on the water of any harbor, estuary, bay, or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations; provided, however, that any such tidelands, reserved to the State solely for street purposes, which the Legislature finds and declares are not used for navigation purposes and are not necessary for such purposes may be sold to any town, city, county, city and county, municipal corporations, private persons, partnerships or corporations subject to such conditions as the Legislature determines are necessary to be imposed in connection with any such sales in order to protect the public interest. [*New section adopted June 8, 1976.*]

[*Access to Navigable Waters*]

SEC. 4. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof. [*New section adopted June 8, 1976.*]

[*State Control of Water Use*]

SEC. 5. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law. [*New section adopted June 8, 1976.*]

[*Compensation for Water Use*]

SEC. 6. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law. [*New section adopted June 8, 1976.*]

[*Acquisition of Real Property—Conformance to California Water Laws*]

SEC. 7. Whenever any agency of government, local, state, or federal, hereafter acquires any interest in real property in this State, the acceptance of the interest shall constitute an agreement by the agency to conform to

the laws of California as to the acquisition, control, use, and distribution of water with respect to the land so acquired. [*New section adopted June 8, 1976.*]

ARTICLE X A*

WATER RESOURCES DEVELOPMENT

[*Article X A has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982*]

[*Water Rights, Water Quality, and Fish and Wildlife Resources Guaranteed and Protected*]

SECTION 1. The people of the State hereby provide the following guarantees and protections in this article for water rights, water quality, and fish and wildlife resources. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*Statutes for Protection of Fish and Wildlife Resources, Delta, Etc.*]

SEC. 2. No statute amending or repealing, or adding to, the provisions of the statute enacted by Senate Bill No. 200 † of the 1979–80 Regular Session of the Legislature which specify (1) the manner in which the State will protect fish and wildlife resources in the Sacramento-San Joaquin Delta, Suisun Marsh, and San Francisco Bay system westerly of the delta; (2) the manner in which the State will protect existing water rights in the Sacramento-San Joaquin Delta; and (3) the manner in which the State will operate the State Water Resources Development System to comply with water quality standards and water quality control plans, shall become effective unless approved by the electors in the same manner as statutes amending initiative statutes are approved; except that the Legislature may, by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, amend or repeal, or add to, these provisions if the statute does not in any manner reduce the protection of the delta or fish and wildlife. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

* New Article X A adopted November 4, 1980.

† Chapter 632, Statutes of 1980.

[*Appropriations of Water—Components of California Wild and Scenic Rivers System*]

SEC. 3. No water shall be available for appropriation by storage in, or by direct diversion from, any of the components of the California Wild and Scenic Rivers System, as such system exists on January 1, 1981, where such appropriation is for export of water into another major hydrologic basin of the State, as defined in the Department of Water Resources Bulletin 160-74, unless such export is expressly authorized prior to such appropriation by: (a) an initiative statute approved by the electors, or (b) the Legislature, by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*Statutes Amending, Repealing, or Adding to Delta Protection Act*]

SEC. 4. No statute amending or repealing, or adding to, the provisions of Part 4.5 (commencing with Section 12200) of Division 6 of the Water Code (the Delta Protection Act) shall become effective unless approved by the electors in the same manner as statutes amending initiative statutes are approved; except that the Legislature may, by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, amend or repeal, or add to, these provisions if the statute does not in any manner reduce the protection of the delta or fish and wildlife. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*Eminent Domain Proceedings to Acquire Water Rights or Contract Rights for Water or Water Quality Maintenance in Delta Prohibited*]

SEC. 5. No public agency may utilize eminent domain proceedings to acquire water rights, which are held for uses within the Sacramento-San Joaquin Delta as defined in Section 12220 of the Water Code, or any contract rights for water or water quality maintenance in the Delta for the purpose of exporting such water from the Delta. This provision shall not be construed to prohibit the utilization of eminent domain proceedings for the purpose of acquiring land or any other rights necessary for the construction of water facilities, including, but not limited to, facilities authorized in Chapter 8 (commencing with Section 12930) of Part 6 of Division 6 of the Water Code. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*Actions and Proceedings*]

SEC. 6. (a) The venue of any of the following actions or proceedings brought in a superior court shall be Sacramento County:

(1) An action or proceeding to attack, review, set aside, void, or annul any provision of the statute enacted by Senate Bill No. 200 † of the 1979–80 Regular Session of the Legislature.

(2) An action or proceeding to attack, review, set aside, void, or annul the determination made by the Director of Water Resources and the Director of Fish and Game pursuant to subdivision (a) of Section 11255 of the Water Code.

(3) An action or proceeding which would have the effect of attacking, reviewing, preventing, or substantially delaying the construction, operation, or maintenance of the peripheral canal unit described in subdivision (a) of Section 11255 of the Water Code.

(4) An action or proceeding to require the State Water Resources Development System to comply with subdivision (b) of Section 11460 of the Water Code.

(5) An action or proceeding to require the Department of Water Resources or its successor agency to comply with the permanent agreement specified in subdivision (a) of Section 11256 of the Water Code.

(6) An action or proceeding to require the Department of Water Resources or its successor agency to comply with the provisions of the contracts entered into pursuant to Section 11456 of the Water Code.

(b) An action or proceeding described in paragraph (1) of subdivision (a) shall be commenced within one year after the effective date of the statute enacted by Senate Bill No. 200 † of the 1979–80 Regular Session of the Legislature. Any other action or proceeding described in subdivision (a) shall be commenced within one year after the cause of action arises unless a shorter period is otherwise provided by statute.

(c) The superior court or a court of appeals shall give preference to the actions or proceedings described in this section over all civil actions or proceedings pending in the court. The superior court shall commence hearing any such action or proceeding within six months after the commencement of the action or proceeding, provided that any such hearing may be delayed by joint stipulation of the parties or at the discretion of the court for good cause shown. The provisions of this section shall supersede any provisions of law requiring courts to give preference to other civil actions or proceedings. The provisions of this subdivision may be enforced by mandamus.

(d) The Supreme Court shall, upon the request of any party, transfer to itself, before a decision in the court of appeal, any appeal or petition for extraordinary relief from an action or proceeding described in this section,

† Chapter 632, Statutes of 1980.

† Chapter 632, Statutes of 1980.

unless the Supreme Court determines that the action or proceeding is unlikely to substantially affect (1) the construction, operation, or maintenance of the peripheral canal unit described in subdivision (a) of Section 11255 of the Water Code, (2) compliance with subdivision (b) of Section 11460 of the Water Code, (3) compliance with the permanent agreement specified in Section 11256 of the Water Code, or (4) compliance with the provisions of the contracts entered into pursuant to Section 11456 of the Water Code. The request for transfer shall receive preference on the Supreme Court's calendar. If the action or proceeding is transferred to the Supreme Court, the Supreme Court shall commence to hear the matter within six months of the transfer unless the parties by joint stipulation request additional time or the court, for good cause shown, grants additional time.

(e) The remedy prescribed by the court for an action or proceeding described in paragraph (4), (5), or (6) of subdivision (a) shall include, but need not be limited to, compliance with subdivision (b) of Section 11460 of the Water Code, the permanent agreement specified in Section 11256 of the Water Code, or the provisions of the contracts entered into pursuant to Section 11456 of the Water Code.

(f) The Board of Supervisors of the County of Sacramento may apply to the State Board of Control for actual costs imposed by the requirements of this section upon the county, and the State Board of Control shall pay such actual costs.

(g) Notwithstanding the provisions of this section, nothing in this Article shall be construed as prohibiting the Supreme Court from exercising the transfer authority contained in Article VI, Section 12 of the Constitution. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*State Agencies' Exercise of Authorized Powers*]

SEC. 7. State agencies shall exercise their authorized powers in a manner consistent with the protections provided by this article. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*Force or Effect of Article*]

SEC. 8. This article shall have no force or effect unless Senate Bill No. 200 † of the 1979–80 Regular Session of the Legislature is enacted and takes effect. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

† Chapter 632, Statutes of 1980.

ARTICLE X B*

MARINE RESOURCES PROTECTION ACT OF 1990

[*Title*]

SECTION 1. This article shall be known and may be cited as the Marine Resources Protection Act of 1990. [*New section adopted November 6, 1990. Initiative measure.*]

[*Definitions*]

SEC. 2. (a) ''District'' means a fish and game district as defined in the Fish and Game Code by statute on January 1, 1990.

(b) Except as specifically provided in this article, all references to Fish and Game Code sections, articles, chapters, parts, and divisions are defined as those statutes in effect on January 1, 1990.

(c) ''Ocean waters'' means the waters of the Pacific Ocean regulated by the State.

(d) ''Zone'' means the Marine Resources Protection zone established pursuant to this article. The zone consists of the following:

(1) In waters less than 70 fathoms or within one mile, whichever is less, around the Channel Islands consisting of the Islands of San Miguel, Santa Rosa, Santa Cruz, Anacapa, San Nicolaus, Santa Barbara, Santa Catalina, and San Clemente.

(2) The area within three nautical miles offshore of the mainland coast, and the area within three nautical miles off any manmade breakwater, between a line extending due west from Point Arguello and a line extending due west from the Mexican border.

(3) In waters less than 35 fathoms between a line running 180 degrees true from Point Fermin and a line running 270 degrees true from the south jetty of Newport Harbor. [*New section adopted November 6, 1990. Initiative measure.*]

[*Gill and Trammel Nets—Usage*]

SEC. 3. (a) From January 1, 1991, to December 31, 1993, inclusive, gill nets or trammel nets may only be used in the zone pursuant to a nontransferable permit issued by the Department of Fish and Game pursuant to Section 5.

(b) On and after January 1, 1994, gill nets and trammel nets shall not be used in the zone. [*New section adopted November 6, 1990. Initiative measure.*]

[*Gill and Trammel Nets—Usage*]

SEC. 4. (a) Notwithstanding any other provision of law, gill nets and trammel nets may not be used to take any species of rockfish.

---

* New Article X B adopted November 6, 1990. Initiative measure.

(b) In ocean waters north of Point Arguello on and after the effective date of this article, the use of gill nets and trammel nets shall be regulated by the provisions of Article 4 (commencing with Section 8660), Article 5 (commencing with Section 8680) and Article 6 (commencing with Section 8720) of Chapter 3 of Part 3 of Division 6 of the Fish and Game Code, or any regulation or order issued pursuant to these articles, in effect on January 1, 1990, except that as to Sections 8680, 8681, 8681.7, and 8682, and subdivisions (a) through (f), inclusive of Section 8681.5 of the Fish and Game Code, or any regulation or order issued pursuant to these sections, the provisions in effect on January 1, 1989, shall control where not in conflict with other provisions of this article, and shall be applicable to all ocean waters. Notwithstanding the provisions of this section, the Legislature shall not be precluded from imposing more restrictions on the use and/or possession of gill nets or trammel nets. The Director of the Department of Fish and Game shall not authorize the use of gill nets or trammel nets in any area where the use is not permitted even if the director makes specified findings. [*New section adopted November 6, 1990. Initiative measure.*]

[*Gill and Trammel Nets—Usage*]

SEC. 5. The Department of Fish and Game shall issue a permit to use a gill net or trammel net in the zone for the period specified in subdivision (a) of Section 3 to any applicant who meets both of the following requirements:

(a) Has a commercial fishing license issued pursuant to Sections 7850–7852.3 of the Fish and Game Code.

(b) Has a permit issued pursuant to Section 8681 of the Fish and Game Code and is presently the owner or operator of a vessel equipped with a gill net or trammel net. [*New section adopted November 6, 1990. Initiative measure.*]

[*Permit Fees*]

SEC. 6. The Department of Fish and Game shall charge the following fees for permits issued pursuant to Section 5 pursuant to the following schedule:

Calendar Year	Fee
1991	$250
1992	500
1993	1,000

[*New section adopted November 6, 1990. Initiative measure.*]

[*Permitholder's Compensation for Discontinuing Fishing with Gill and Trammel Nets*]

SEC. 7. (a) Within 90 days after the effective date of this section, every person who intends to seek the compensation provided in subdivision

(b) shall notify the Department of Fish and Game, on forms provided by the department, of that intent. Any person who does not submit the form within that 90-day period shall not be compensated pursuant to subdivision (b). The department shall publish a list of all persons submitting the form within 120 days after the effective date of this section.

(b) After July 1, 1993, and before January 1, 1994, any person who holds a permit issued pursuant to Section 5 and operates in the zone may surrender that permit to the department and agree to permanently discontinue fishing with gill or trammel nets in the zone, for which he or she shall receive, beginning on July 1, 1993, a one time compensation which shall be based upon the average annual ex vessel value of the fish other than any species of rockfish landed by a fisherman, which were taken pursuant to a valid general gill net or trammel net permit issued pursuant to Sections 8681 and 8682 of the Fish and Game Code within the zone during the years 1983 to 1987, inclusive. The department shall verify those landings by reviewing logs and landing receipts submitted to it. Any person who is denied compensation by the department as a result of the department's failure to verify landings may appeal that decision to the Fish and Game Commission.

(c) The State Board of Control shall, prior to the disbursement of any funds, verify the eligibility of each person seeking compensation and the amount of the compensation to be provided in order to ensure compliance with this section.

(d) Unless the Legislature enacts any required enabling legislation to implement this section on or before July 1, 1993, no compensation shall be paid under this article. [*New section adopted November 6, 1990. Initiative measure.*]

[*Marine Resources Protection Account—Fees—Interest*]

SEC. 8. (a) There is hereby created the Marine Resources Protection Account in the Fish and Game Preservation Fund. On and after January 1, 1991, the Department of Fish and Game shall collect any and all fees required by this article. All fees received by the department pursuant to this article shall be deposited in the account and shall be expended or encumbered to compensate persons who surrender permits pursuant to Section 7 or to provide for administration of this article. All funds received by the department during any fiscal year pursuant to this article which are not expended during that fiscal year to compensate persons as set forth in Section 7 or to provide for administration of this article shall be carried over into the following fiscal year and shall be used only for those purposes. All interest accrued from the department's retention of fees received pursuant to this article shall be credited to the account. The accrued interest may only be expended for the purposes authorized by this article. The account shall continue in existence, and the requirement to pay fees under this ar-

ticle shall remain in effect, until the compensation provided in Section 7 has been fully funded or until January 1, 1995, whichever occurs first.

(b) An amount, not to exceed 15 percent of the total annual revenues deposited in the account excluding any interest accrued or any funds carried over from a prior fiscal year may be expended for the administration of this article.

(c) In addition to a valid California sportfishing license issued pursuant to Sections 7149, 7149.1 or 7149.2 of the Fish and Game Code and any applicable sport license stamp issued pursuant to the Fish and Game Code, a person taking fish from ocean waters south of a line extending due west from Point Arguello for sport purposes shall have permanently affixed to that person's sportfishing license a marine resources protection stamp which may be obtained from the department upon payment of a fee of three dollars ($3). This subdivision does not apply to any one-day fishing license.

(d) In addition to a valid California commercial passenger fishing boat license required by Section 7920 of the Fish and Game Code, the owner of any boat or vessel who, for profit, permits any person to fish from the boat or vessel in ocean waters south of a line extending due west from Point Arguello, shall obtain and permanently affix to the license a commercial marine resources protection stamp which may be obtained from the department upon payment of a fee of three dollars ($3).

(e) The department may accept contributions or donations from any person who wishes to donate money to be used for the compensation of commercial gill net and trammel net fishermen who surrender permits under this article.

(f) This section shall become inoperative on January 1, 1995. [*New section adopted November 6, 1990. Inoperative January 1, 1995. Initiative measure.*]

[*Marine Resources Protection Account—Grants*]

SEC. 9. Any funds remaining in the Marine Resources Protection Account in the Fish and Game Preservation Fund on or after January 1, 1995, shall, with the approval of the Fish and Game Commission, be used to provide grants to colleges, universities and other bonafide scientific research groups to fund marine resource related scientific research within the ecological reserves established by Section 14 of this act. [*New section adopted November 6, 1990. Initiative measure.*]

[*Report to Legislature*]

SEC. 10. On or before December 31 of each year, the Director of Fish and Game shall prepare and submit a report to the Legislature regarding the implementation of this article including an accounting of all funds. [*New section adopted November 6, 1990. Initiative measure.*]

[*Violations*]

SEC. 11. It is unlawful for any person to take, possess, receive, transport, purchase, sell, barter, or process any fish obtained in violation of this article. [*New section adopted November 6, 1990. Initiative measure.*]

[*Commercial Fishing Daily Landings Monitoring and Evaluating Program*]

SEC. 12. To increase the State's scientific and biological information on the ocean fisheries of this State, the Department of Fish and Game shall establish a program whereby it can monitor and evaluate the daily landings of fish by commercial fishermen who are permitted under this article to take these fish. The cost of implementing this monitoring program shall be borne by the commercial fishing industry. [*New section adopted November 6, 1990. Initiative measure.*]

[*Penalties for Violations—Probation—Fine*]

SEC. 13. (a) The penalty for a first violation of the provisions of Sections 3 and 4 of this article is a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) and a mandatory suspension of any license, permit or stamp to take, receive, transport, purchase, sell, barter or process fish for commercial purposes for six months. The penalty for a second or subsequent violation of the provisions of Sections 3 and 4 of this article is a fine of not less than two thousand five hundred dollars ($2,500) and not more than ten thousand dollars ($10,000) and a mandatory suspension of any license, permit or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for one year.

(b) Notwithstanding any other provisions of law, a violation of Section 8 of this article shall be deemed a violation of the provisions of Section 7145 of the Fish and Game Code and the penalty for such violation shall be consistent with the provisions of Section 12002.2 of said code.

(c) If a person convicted of a violation of Section 3, 4, or 8 of this article is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or condition of probation, that the person pay at least the minimum fine prescribed in this section. [*New section adopted November 6, 1990. Initiative measure.*]

[*New Ecological Reserves*]

SEC. 14. Prior to January 1, 1994, the Fish and Game Commission shall establish four new ecological reserves in ocean waters along the mainland coast. Each ecological reserve shall have a surface area of at least two square miles. The commission shall restrict the use of these ecological reserves to scientific research relating to the management and enhancement of marine resources. [*New section adopted November 6, 1990. Initiative measure.*]

[*Article not Preempting or Superseding Other Protective Closures*]

SEC. 15. This article does not preempt or supersede any other closures to protect any other wildlife, including sea otters, whales, and shorebirds. [*New section adopted November 6, 1990. Initiative measure.*]

[*Severability*]

SEC. 16. If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable. [*New section adopted November 6, 1990. Initiative measure.*]

ARTICLE XI. [*Repealed June 2, 1970. See Article XI, below.*]

ARTICLE XI*

LOCAL GOVERNMENT

[*Counties—Formation, Boundaries, County Seat, Officers, and Governing Body*]

SECTION 1. (a) The State is divided into counties which are legal subdivisions of the State. The Legislature shall prescribe uniform procedure for county formation, consolidation, and boundary change. Formation or consolidation requires approval by a majority of electors voting on the question in each affected county. A boundary change requires approval by the governing body of each affected county. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

(b) The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees. [*As amended June 7, 1988.*]

---

* New Article XI adopted June 2, 1970.

SEC. 2. [*Repealed June 2, 1970. See Section 2, below.*]

[*Cities—Formation, Powers*]

SEC. 2. (a) The Legislature shall prescribe uniform procedure for city formation and provide for city powers.

(b) Except with approval by a majority of its electors voting on the question, a city may not be annexed to or consolidated into another. [*New section adopted June 2, 1970.*]

[*County or City—Charters*]

SEC. 3. (a) For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. The charter is effective when filed with the Secretary of State. A charter may be amended, revised, or repealed in the same manner. A charter, amendment, revision, or repeal thereof shall be published in the official state statutes. County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments.

(b) The governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed by initiative or by the governing body.

(c) An election to determine whether to draft or revise a charter and elect a charter commission may be required by initiative or by the governing body.

(d) If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail. [*As amended November 5, 1974.*]

[*County Charters—Provisions*]

SEC. 4. County charters shall provide for:

(a) A governing body of 5 or more members, elected (1) by district or, (2) at large, or (3) at large, with a requirement that they reside in a district. Charter counties are subject to statutes that relate to apportioning population of governing body districts.

(b) The compensation, terms, and removal of members of the governing body. If a county charter provides for the Legislature to prescribe the salary of the governing body, such compensation shall be prescribed by the governing body by ordinance.

(c) An elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal.

(d) The performance of functions required by statute.

(e) The powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein.

(f) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attachés, and other persons to be employed, and for the prescribing and regulating by such bodies of the powers, duties, qualifications, and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal.

(g) Whenever any county has framed and adopted a charter, and the same shall have been approved by the Legislature as herein provided, the general laws adopted by the Legislature in pursuance of Section 1(b) of this article, shall, as to such county, be superseded by said charter as to matters for which, under this section it is competent to make provision in such charter, and for which provision is made therein, except as herein otherwise expressly provided.

(h) Charter counties shall have all the powers that are provided by this Constitution or by statute for counties. [*As amended June 7, 1988.*]

SEC. 5. [*Repealed June 2, 1970. See Section 5, below.*]

[*City Charters—Provisions*]

SEC. 5. (a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

(b) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees. [*New section adopted June 2, 1970.*]

SEC. 5.1. [*Repealed June 2, 1970.*]

SEC. 6. [*Repealed June 2, 1970. See Section 6, below.*]

[*Charter City and County*]

SEC. 6. (a) A county and all cities within it may consolidate as a charter city and county as provided by statute.

(b) A charter city and county is a charter city and a charter county. Its charter city powers supersede conflicting charter county powers. [*New section adopted June 2, 1970.*]

SEC. 7. [*Repealed June 2, 1970. See Section 7, below.*]

[*Local Ordinances and Regulations*]

SEC. 7. A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. [*New section adopted June 2, 1970.*]

SEC. 7½. [*Repealed June 2, 1970.*]

SEC. 7½b. [*Repealed June 2, 1970.*]

[*Ballot Measures—Application*]

SEC. 7.5. (a) A city or county measure proposed by the legislative body of a city, charter city, county, or charter county and submitted to the voters for approval may not do either of the following:

(1) Include or exclude any part of the city, charter city, county, or charter county from the application or effect of its provisions based upon approval or disapproval of the city or county measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of the city, charter city, county, charter county, or any part thereof.

(2) Contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

(b) ''City or county measure,'' as used in this section, means an advisory question, proposed charter or charter amendment, ordinance, proposition for the issuance of bonds, or other question or proposition submitted to the voters of a city, or to the voters of a county at an election held throughout an entire single county. [*New section adopted June 2, 1998.*]

SEC. 8. [*Repealed June 2, 1970. See Section 8, below.*]

[*Counties—Performance of Municipal Functions*]

SEC. 8. (a) The Legislature may provide that counties perform municipal functions at the request of cities within them.

(b) If provided by their respective charters, a county may agree with a city within it to assume and discharge specified municipal functions. [*New section adopted June 2, 1970.*]

SEC. 8½. [*Repealed June 2, 1970.*]

[*Local Utilities*]

SEC. 9. (a) A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.

(b) Persons or corporations may establish and operate works for supplying those services upon conditions and under regulations that the city may prescribe under its organic law. [*New section adopted June 2, 1970.*]

[*Local Government—Extra Compensation; City, County or District Employees—Residency*]

SEC. 10. (a) A local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or pay a claim under an agreement made without authority of law.

(b) A city or county, including any chartered city or chartered county, or public district, may not require that its employees be residents of such city, county, or district; except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location. [*As amended June 8, 1976.*]

SEC. 10.5. [*Repealed June 8, 1976.*]

[*Private Control of County or Municipal Functions—Deposit and Investment of Public Moneys*]

SEC. 11. (a) The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions.

(b) The Legislature may, however, provide for the deposit of public moneys in any bank in this State or in any savings and loan association in this State or any credit union in this State or in any federally insured industrial loan company in this State and for payment of interest, principal, and redemption premiums of public bonds and other evidence of public indebtedness by banks within or without this State. It may also provide for investment of public moneys in securities and the registration of bonds and other evidences of indebtedness by private persons or bodies, within or without this State, acting as trustees or fiscal agents. [*As amended November 8, 1988.*]

SEC. 12. [*As amended June 27, 1933, added to Article XIII as Section 37, June 2, 1970. See Section 12, below.*]

[*Claims Against Counties or Cities, Etc.*]

SEC. 12. The Legislature may prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees. [*New section adopted June 2, 1970.*]

SEC. 13. [*Repealed June 2, 1970. See Section 13, below.*]

[*Distribution of Powers—Construction of Article*]

SEC. 13. The provisions of Sections 1(b) (except for the second sentence), 3(a), 4, and 5 of this Article relating to matters affecting the distribution of powers between the Legislature and cities and counties, including matters affecting supersession, shall be construed as a restatement of all related provisions of the Constitution in effect immediately prior to the effective date of this amendment, and as making no substantive change.

The terms general law, general laws, and laws, as used in this Article, shall be construed as a continuation and restatement of those terms as used in the Constitution in effect immediately prior to the effective date of this amendment, and not as effecting a change in meaning. [*New section adopted June 2, 1970.*]

SEC. 13½. [*As amended November 3, 1914, added to Article XIII as Section 37.5, June 2, 1970.*]

[*Local Government—Taxation*]

SEC. 14. A local government formed after the effective date of this section, the boundaries of which include all or part of two or more counties, shall not levy a property tax unless such tax has been approved by a majority vote of the qualified voters of that local government voting on the issue of the tax. [*New section adopted November 2, 1976.*]

[*Vehicle License Fee Allocations*]

SEC. 15. (a) From the revenues derived from taxes imposed pursuant to the Vehicle License Fee Law (Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code), or its successor, other than fees on trailer coaches and mobilehomes, over and above the costs of collection and any refunds authorized by law, those revenues derived from that portion of the vehicle license fee rate that does not exceed 0.65 percent of the market value of the vehicle shall be allocated as follows:

(1) An amount shall be specified in the Vehicle License Fee Law, or the successor to that law, for deposit in the State Treasury to the credit of the Local Revenue Fund established in Chapter 6 (commencing with Section 17600) of Part 5 of Division 9 of the Welfare and Institutions Code, or its successor, if any, for allocation to cities, counties, and cities and counties as otherwise provided by law.

(2) The balance shall be allocated to cities, counties, and cities and counties as otherwise provided by law.

(b) If a statute enacted by the Legislature reduces the annual vehicle license fee below 0.65 percent of the market value of a vehicle, the Legislature shall, for each fiscal year for which the reduced fee applies, provide by statue for the allocation of an additional amount of money that is equal to the decrease, resulting from the fee reduction, in the total amount of revenues that are otherwise required to be deposited and allocated under subdivision (a) for that same fiscal year. That amount shall be allocated to cities, counties, and cities and counties in the same pro rata amounts and for the same purposes as are revenues subject to subdivision (a). [*As amended November 2, 2004.*]

SEC. 16. [*Added to Article XIII as Section 38, June 2, 1970.*]

SEC. 16½. [*As amended November 8, 1932, added to Article XIII as Section 39, June 2, 1970.*]

SEC. 17. [*Repealed June 2, 1970.*]

SEC. 18. [*As amended November 8, 1949, added to Article XIII as Section 40, June 2, 1970.*]

SEC. 18¼. [*Repealed June 2, 1970.*]

SEC. 19. [*Repealed June 2, 1970.*]

SEC. 20. [*Repealed June 2, 1970.*]

ARTICLE XII. [*Repealed November 5, 1974. See Article XII, below.*]

ARTICLE XII*

PUBLIC UTILITIES

[*Public Utilities Commission—Composition*]

SECTION 1. The Public Utilities Commission consists of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for staggered 6-year terms. A vacancy is filled for the remainder of the term. The Legislature may remove a member for incompetence, neglect of duty, or corruption, two thirds of the membership of each house concurring. [*New section adopted November 5, 1974.*]

[*Public Utilities Commission—Powers and Duties*]

SEC. 2. Subject to statute and due process, the commission may establish its own procedures. Any commissioner as designated by the commission may hold a hearing or investigation or issue an order subject to commission approval. [*New section adopted November 5, 1974.*]

* New Article XII adopted November 5, 1974.

[*Public Utilities—Legislative Control*]

SEC. 3. Private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers, are public utilities subject to control by the Legislature. The Legislature may prescribe that additional classes of private corporations or other persons are public utilities. [*New section adopted November 5, 1974.*]

[*Rates—Discrimination in Transportation Charges, Etc.*]

SEC. 4. The commission may fix rates and establish rules for the transportation of passengers and property by transportation companies, prohibit discrimination, and award reparation for the exaction of unreasonable, excessive, or discriminatory charges. A transportation company may not raise a rate or incidental charge except after a showing to and a decision by the commission that the increase is justified, and this decision shall not be subject to judicial review except as to whether confiscation of property will result. [*New section adopted November 5, 1974.*]

[*Public Utilities Commission—Compensation in Eminent Domain Proceedings*]

SEC. 5. The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the commission, to establish the manner and scope of review of commission action in a court of record, and to enable it to fix just compensation for utility property taken by eminent domain. [*New section adopted November 5, 1974.*]

[*Public Utilities Commission—Powers and Duties*]

SEC. 6. The commission may fix rates, establish rules, examine records, issue subpenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction. [*New section adopted November 5, 1974.*]

[*Free Passes, Public Officials—Conflict of Interest, Public Utilities Commissioner*]

SEC. 7. A transportation company may not grant free passes or discounts to anyone holding an office in this State; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office. A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission. [*New section adopted November 5, 1974.*]

[*Public Utilities—Regulation*]

SEC. 8. A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission. This section does not affect power over public utilities relating to the making and enforcement of police, sanitary, and other regulations concerning municipal affairs pursuant to a city charter existing on October 10, 1911, unless that power has been revoked by the city's electors, or the right of any city to grant franchises for public utilities or other businesses on terms, conditions, and in the manner prescribed by law. [*New section adopted November 5, 1974.*]

[*Restatement*]

SEC. 9. The provisions of this article restate all related provisions of the Constitution in effect immediately prior to the effective date of this amendment and make no substantive change. [*New section adopted November 5, 1974.*]

SEC. 10. [*Repealed November 5, 1974.*]

SEC. 17. [*Repealed November 5, 1974.*]

SEC. 18. [*Repealed November 5, 1974.*]

SEC. 19. [*Repealed November 5, 1974.*]

SEC. 20. [*Repealed November 5, 1974.*]

SEC. 21. [*Repealed November 5, 1974.*]

SEC. 22. [*Repealed November 5, 1974.*]

SEC. 23. [*Repealed November 5, 1974.*]

SEC. 23a. [*Repealed November 5, 1974.*]

ARTICLE XIII. [*Repealed November 5, 1974. See Article XIII, below.*]

ARTICLE XIII*

TAXATION

SECTION 1. [*Repealed November 5, 1974. See Section 1, below.*]

[*Uniformity Clause*]

SECTION 1. Unless otherwise provided by this Constitution or the laws of the United States:

(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed

* New Article XIII adopted November 5, 1974.

value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

(b) All property so assessed shall be taxed in proportion to its full value. [*New section adopted November 5, 1974.*]

SEC. 1a. [*Repealed November 5, 1974.*]

SEC. 1b. [*Repealed November 5, 1974.*]

SEC. 1c. [*Repealed November 5, 1974.*]

SEC. 1d. [*Repealed November 5, 1974.*]

SEC. 1¼. [*Repealed November 5, 1974.*]

SEC. 1¼a. [*Repealed November 5, 1974.*]

SEC. 1¼b. [*Repealed November 5, 1974.*]

SEC. 1½. [*Repealed November 5, 1974.*]

SEC. 1½a. [*Repealed November 5, 1974.*]

SEC. 1.60. [*Repealed November 5, 1974.*]

SEC. 1.61. [*Repealed November 5, 1974.*]

SEC. 1.62. [*Repealed November 5, 1974.*]

SEC. 1.63. [*Repealed November 5, 1974.*]

SEC. 1.64. [*Repealed November 5, 1974.*]

SEC. 1.65. [*Repealed November 5, 1974.*]

SEC. 1.66. [*Repealed November 5, 1974.*]

SEC. 1.67. [*Repealed November 5, 1974.*]

SEC. 1.68. [*Repealed November 5, 1974.*]

SEC. 1.69. [*Repealed November 5, 1974.*]

SEC. 1¾. [*Repealed November 5, 1974.*]

SEC. 2. [*Repealed November 5, 1974. See Section 2, below.*]

[*Personal Property Classification*]

SEC. 2. The Legislature may provide for property taxation of all forms of tangible personal property, shares of capital stock, evidences of indebtedness, and any legal or equitable interest therein not exempt under any other provision of this article. The Legislature, two-thirds of the membership of each house concurring, may classify such personal property for differential taxation or for exemption. The tax on any interest in notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, or mortgages shall not exceed four-tenths of one percent of full value, and the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction. [*New section adopted November 5, 1974.*]

SEC. 2.5. [*Repealed November 5, 1974.*]

SEC. 2.6. [*Repealed November 5, 1974.*]

SEC. 2.8. [*Repealed November 5, 1974.*]

[*Property Tax Exemptions*]

SEC. 3. The following are exempt from property taxation:

[*State Owned Property*]

(a) Property owned by the State.

[*Local Government Property*]

(b) Property owned by a local government, except as otherwise provided in Section 11(a).

[*Government Bonds*]

(c) Bonds issued by the State or a local government in the State.

[*Public Property*]

(d) Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities.

[*Educational Property*]

(e) Buildings, land, equipment, and securities used exclusively for educational purposes by a nonprofit institution of higher education.

[*Church Property*]

(f) Buildings, land on which they are situated, and equipment used exclusively for religious worship.

[*Cemetery Property*]

(g) Property used or held exclusively for the permanent deposit of human dead or for the care and maintenance of the property or the dead, except when used or held for profit. This property is also exempt from special assessment.

[*Growing Crops*]

(h) Growing crops.

[*Fruit and Nut Trees*]

(i) Fruit and nut trees until 4 years after the season in which they were planted in orchard form and grape vines until 3 years after the season in which they were planted in vineyard form.

[*Timber Exemption*]

(j) Immature forest trees planted on lands not previously bearing merchantable timber or planted or of natural growth on lands from which the merchantable original growth timber stand to the extent of 70 percent of all trees over 16 inches in diameter has been removed. Forest trees or timber shall be considered mature at such time after 40 years from the time of planting or removal of the original timber when so declared by a majority vote of a board consisting of a representative from the State Board of Forestry, a representative from the State Board of Equalization, and the assessor of the county in which the trees are located.

The Legislature may supersede the foregoing provisions with an alternative system or systems of taxing or exempting forest trees or timber, including a taxation system not based on property valuation. Any alternative system or systems shall provide for exemption of unharvested immature trees, shall encourage the continued use of timberlands for the production of trees for timber products, and shall provide for restricting the use of timberland to the production of timber products and compatible uses with provisions for taxation of timberland based on the restrictions. Nothing in this paragraph shall be construed to exclude timberland from the provisions of Section 8 of this article.

[*Homeowners' Exemption*]

(k) $7,000 of the full value of a dwelling, as defined by the Legislature, when occupied by an owner as his principal residence, unless the dwelling is receiving another real property exemption. The Legislature may increase this exemption and may deny it if the owner received state or local aid to pay taxes either in whole or in part, and either directly or indirectly, on the dwelling.

No increase in this exemption above the amount of $7,000 shall be effective for any fiscal year unless the Legislature increases the rate of state taxes in an amount sufficient to provide the subventions required by Section 25.

If the Legislature increases the homeowners' property tax exemption, it shall provide increases in benefits to qualified renters, as defined by law, comparable to the average increase in benefits to homeowners, as calculated by the Legislature.

[*Vessels*]

(*l*) Vessels of more than 50 tons burden in this State and engaged in the transportation of freight or passengers.

[*Household Furnishings—Personal Effects*]

(m) Household furnishings and personal effects not held or used in connection with a trade, profession, or business.

[*Debt Secured by Land*]

(n) Any debt secured by land.

[*Veterans' Exemptions*]

(o) Property in the amount of $1,000 of a claimant who—

(1) is serving in or has served in and has been discharged under honorable conditions from service in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Revenue Marine (Revenue Cutter) Service; and—

(2) served either

(i) in time of war, or

(ii) in time of peace in a campaign or expedition for which a medal has been issued by Congress, or

(iii) in time of peace and because of a service-connected disability was released from active duty; and—

(3) resides in the State on the current lien date.

An unmarried person who owns property valued at $5,000 or more, or a married person, who, together with the spouse, owns property valued at $10,000 or more, is ineligible for this exemption.

If the claimant is married and does not own property eligible for the full amount of the exemption, property of the spouse shall be eligible for the unused balance of the exemption.

[*Veterans' Exemptions*]

(p) Property in the amount of $1,000 of a claimant who—

(1) is the unmarried spouse of a deceased veteran who met the service requirement stated in paragraphs (1) and (2) of subsection 3(o), and

(2) does not own property in excess of $10,000, and

(3) is a resident of the State on the current lien date.

[*Veterans' Exemptions*]

(q) Property in the amount of $1,000 of a claimant who—

(1) is the parent of a deceased veteran who met the service requirement stated in paragraphs (1) and (2) of subsection 3(o), and

(2) receives a pension because of the veteran's service, and

(3) is a resident of the State on the current lien date.

Either parent of a deceased veteran may claim this exemption.

An unmarried person who owns property valued at $5,000 or more, or a married person, who, together with the spouse, owns property valued at $10,000 or more, is ineligible for this exemption.

[*Veterans' Exemptions*]

(r) No individual residing in the State on the effective date of this amendment who would have been eligible for the exemption provided by

the previous section 1¼ of this article had it not been repealed shall lose eligibility for the exemption as a result of this amendment. [*As amended November 8, 1988.*]

[*Veterans' Exemptions—Change in Assessment Ratio—Adjustment*]

SEC. 3.5. In any year in which the assessment ratio is changed, the Legislature shall adjust the valuation of assessable property described in subdivisions (o), (p) and (q) of Section 3 of this article to maintain the same proportionate values of such property. [*New section adopted November 6, 1979.*]

[*Property Tax Exemption*]

SEC. 4. The Legislature may exempt from property taxation in whole or in part:

[*Home of Veteran or Surviving Spouse*]

(a) The home of a person or a person's spouse, including an unmarried surviving spouse, if the person, because of injury incurred in military service, is blind in both eyes, has lost the use of 2 or more limbs, or is totally disabled, or if the person has, as a result of a service-connected injury or disease, died while on active duty in military service, unless the home is receiving another real property exemption.

[*Religious, Hospital and Charitable Property*]

(b) Property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (1) that are organized and operating for those purposes, (2) that are nonprofit, and (3) no part of whose net earnings inures to the benefit of any private shareholder or individual.

[*Specific College Exemptions*]

(c) Property owned by the California School of Mechanical Arts, California Academy of Sciences, or Cogswell Polytechnical College, or held in trust for the Huntington Library and Art Gallery, or their successors.

[*Church Parking Lots*]

(d) Real property not used for commercial purposes that is reasonably and necessarily required for parking vehicles of persons worshipping on land exempt by Section 3(f). [*As amended November 3, 1992.*]

[*Exemption of Buildings Under Construction*]

SEC. 5. Exemptions granted or authorized by Sections 3(e), 3(f), and 4(b) apply to buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption. [*New section adopted November 5, 1974.*]

SEC. 6. [*Repealed November 5, 1974. See Section 6, below.*]

[*Exemption Waivers*]

SEC. 6. The failure in any year to claim, in a manner required by the laws in effect at the time the claim is required to be made, an exemption or classification which reduces a property tax shall be deemed a waiver of the exemption or classification for that year. [*New section adopted November 5, 1974.*]

SEC. 7. [*Repealed November 5, 1974. See Section 7, below.*]

[*Real Property Taxes—Exemption by County Boards of Supervisors*]

SEC. 7. The Legislature, two-thirds of the membership of each house concurring, may authorize county boards of supervisors to exempt real property having a full value so low that, if not exempt, the total taxes and applicable subventions on the property would amount to less than the cost of assessing and collecting them. [*New section adopted November 5, 1974.*]

[*Open Space Land and Historical Property—Exemption*]

SEC. 8. To promote the conservation, preservation and continued existence of open space lands, the Legislature may define open space land and shall provide that when this land is enforceably restricted, in a manner specified by the Legislature, to recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

To promote the preservation of property of historical significance, the Legislature may define such property and shall provide that when it is enforceably restricted, in a manner specified by the Legislature, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses. [*As amended June 8, 1976.*]

[*Postponement of Property Taxes*]

SEC. 8.5. The Legislature may provide by law for the manner in which a person of low or moderate income who is 62 years of age or older may postpone ad valorem property taxes on the dwelling owned and occupied by him or her as his or her principal place of residence. The Legislature may also provide by law for the manner in which a disabled person may postpone payment of ad valorem property taxes on the dwelling owned and occupied by him or her as his or her principal place of residence. The Legislature shall have plenary power to define all terms in this section.

The Legislature shall provide by law for subventions to counties, cities and counties, cities and districts in an amount equal to the amount of rev-

enue lost by each by reason of the postponement of taxes and for the reimbursement to the State of subventions from the payment of postponed taxes. Provision shall be made for the inclusion of reimbursement for the payment of interest on, and any costs to the State incurred in connection with, the subventions. [*As amended November 6, 1984.*]

SEC. 9. [*Repealed November 5, 1974. See Section 9, below.*]

[*Valuation of Certain Homes*]

SEC. 9. The Legislature may provide for the assessment for taxation only on the basis of use of a single-family dwelling, as defined by the Legislature, and so much of the land as is required for its convenient use and occupation, when the dwelling is occupied by an owner and located on land zoned exclusively for single-family dwellings or for agricultural purposes. [*New section adopted November 5, 1974.*]

SEC. 9a. [*Repealed November 5, 1974.*]

SEC. 9.5. [*Repealed November 5, 1974.*]

SEC. 10. [*Repealed November 5, 1974. See Section 10, below.*]

[*Golf Course Values*]

SEC. 10. Real property in a parcel of 10 or more acres which, on the lien date and for 2 or more years immediately preceding, has been used exclusively for nonprofit golf course purposes shall be assessed for taxation on the basis of such use, plus any value attributable to mines, quarries, hydrocarbon substances, or other minerals in the property or the right to extract hydrocarbons or other minerals from the property. [*New section adopted November 5, 1974.*]

SEC. 10½. [*Repealed November 5, 1974.*]

SEC. 11. [*Repealed November 5, 1974. See Section 11, below.*]

[*Taxation of Local Government Real Property*]

SEC. 11. (a) Lands owned by a local government that are outside its boundaries, including rights to use or divert water from surface or underground sources and any other interests in lands, are taxable if (1) they are located in Inyo or Mono County and (a) they were assessed for taxation to the local government in Inyo County as of the 1966 lien date, or in Mono County as of the 1967 lien date, whether or not the assessment was valid when made, or (b) they were acquired by the local government subsequent to that lien date and were assessed to a prior owner as of that lien date and each lien date thereafter, or (2) they are located outside Inyo or Mono County and were taxable when acquired by the local government. Improvements owned by a local government that are outside its boundaries

are taxable if they were taxable when acquired or were constructed by the local government to replace improvements which were taxable when acquired.

(b) Taxable land belonging to a local government and located in Inyo County shall be assessed in any year subsequent to 1968 at the place where it was assessed as of the 1966 lien date and in an amount derived by multiplying its 1966 assessed value by the ratio of the statewide per capita assessed value of land as of the last lien date prior to the current lien date to $766, using civilian population only. Taxable land belonging to a local government and located in Mono County shall be assessed in any year subsequent to 1968 at the place where it was assessed as of the 1967 lien date and in an amount determined by the preceding formula except that the 1967 lien date, the 1967 assessed value, and the figure $856 shall be used in the formula. Taxable land belonging to a local government and located outside of Inyo and Mono counties shall be assessed at the place where located and in an amount that does not exceed the lower of (1) its fair market value times the prevailing percentage of fair market value at which other lands are assessed and (2) a figure derived in the manner specified in this Section for land located in Mono County.

If land acquired by a local government after the lien date of the base year specified in this Section was assessed in the base year as part of a larger parcel, the assessed value of the part in the base year shall be that fraction of the assessed value of the larger parcel that the area of the part is of the area of the larger parcel.

If a local government divests itself of ownership of land without water rights and this land was assessed in Inyo County as of the 1966 lien date or in Mono County as of the 1967 lien date, the divestment shall not diminish the quantity of water rights assessable and taxable at the place where assessed as of that lien date.

(c) In the event the Legislature changes the prevailing percentage of fair market value at which land is assessed for taxation, there shall be used in the computations required by Section 11(b) of this Article, for the first year for which the new percentage is applicable, in lieu of the statewide per capita assessed value of land as of the last lien date prior to the current lien date, the statewide per capita assessed value of land on the prior lien date times the ratio of the new prevailing percentage of fair market value to the previous prevailing percentage.

(d) If, after March 1954, a taxable improvement is replaced while owned by and in possession of a local government, the replacement improvement shall be assessed, as long as it is owned by a local government, as other improvements are except that the assessed value shall not exceed the product of (1) the percentage at which privately owned improvements are assessed times (2) the highest full value ever used for taxation of the improvement that has been replaced. For purposes of this calculation, the

full value for any year prior to 1967 shall be conclusively presumed to be 4 times the assessed value in that year.

(e) No tax, charge, assessment, or levy of any character, other than those taxes authorized by Sections 11(a) to 11(d), inclusive, of this Article, shall be imposed upon one local government by another local government that is based or calculated upon the consumption or use of water outside the boundaries of the government imposing it.

(f) Any taxable interest of any character, other than a lease for agricultural purposes and an interest of a local government, in any land owned by a local government that is subject to taxation pursuant to Section 11(a) of this Article shall be taxed in the same manner as other taxable interests. The aggregate value of all the interests subject to taxation pursuant to Section 11(a), however, shall not exceed the value of all interests in the land less the taxable value of the interest of any local government ascertained as provided in Sections 11(a) to 11(e), inclusive, of this Article.

(g) Any assessment made pursuant to Sections 11(a) to 11(d), inclusive, of this Article shall be subject to review, equalization, and adjustment by the State Board of Equalization, but an adjustment shall conform to the provisions of these Sections. [*New section adopted November 5, 1974.*]

[*Unsecured Property Tax Rate*]

SEC. 12. (a) Except as provided in subdivision (b), taxes on personal property, possessory interests in land, and taxable improvements located on land exempt from taxation which are not a lien upon land sufficient in value to secure their payment shall be levied at the rates for the preceding tax year upon property of the same kind where the taxes were a lien upon land sufficient in value to secure their payment.

(b) In any year in which the assessment ratio is changed, the Legislature shall adjust the rate described in subdivision (a) to maintain equality between property on the secured and unsecured rolls. [*As amended November 2, 1976.*]

SEC. 12¾. [*Repealed November 5, 1974.*]

SEC. 13. [*Repealed November 5, 1974. See Section 13, below.*]

[*Separate Land and Improvements Assessment*]

SEC. 13. Land and improvements shall be separately assessed. [*New section adopted November 5, 1974.*]

SEC. 14. [*Repealed November 5, 1974. See Section 14, below.*]

[*Tax Situs*]

SEC. 14. All property taxed by local government shall be assessed in the county, city, and district in which it is situated. [*New section adopted November 5, 1974.*]

SEC. 14⅘. [*Repealed November 5, 1974.*]

SEC. 15. [*Repealed November 5, 1974. See Section 15, below.*]

[*Disaster Relief*]

SEC. 15. The Legislature may authorize local government to provide for the assessment or reassessment of taxable property physically damaged or destroyed after the lien date to which the assessment or reassessment relates. [*New section adopted November 5, 1974.*]

SEC. 16. [*Repealed November 5, 1974. See Section 16, below.*]

[*County Board of Equalization—Assessment Appeals Board*]

SEC. 16. The county board of supervisors, or one or more assessment appeals boards created by the county board of supervisors, shall constitute the county board of equalization for a county. Two or more county boards of supervisors may jointly create one or more assessment appeals boards which shall constitute the county board of equalization for each of the participating counties.

Except as provided in subdivision (g) of Section 11, the county board of equalization, under such rules of notice as the county board may prescribe, shall equalize the values of all property on the local assessment roll by adjusting individual assessments.

County boards of supervisors shall fix the compensation for members of assessment appeals boards, furnish clerical and other assistance for those boards, adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization petitions, and may provide for their discontinuance.

The Legislature shall provide for: (a) the number and qualifications of members of assessment appeals boards, the manner of selecting, appointing, and removing them, and the terms for which they serve, and (b) the procedure by which two or more county boards of supervisors may jointly create one or more assessment appeals boards. [*New section adopted November 5, 1974.*]

[*Board of Equalization*]

SEC. 17. The Board of Equalization consists of 5 voting members: the Controller and 4 members elected for 4-year terms at gubernatorial elections. The State shall be divided into four Board of Equalization districts with the voters of each district electing one member. No member may serve more than 2 terms. [*As amended November 6, 1990. Initiative measure.*]

SEC. 18. [*Repealed November 5, 1974. See Section 18, below.*]

[*Intercounty Equalization*]

SEC. 18. The Board shall measure county assessment levels annually and shall bring those levels into conformity by adjusting entire secured lo-

cal assessment rolls. In the event a property tax is levied by the State, however, the effects of unequalized local assessment levels, to the extent any remain after such adjustments, shall be corrected for purposes of distributing this tax by equalizing the assessment levels of locally and state-assessed properties and varying the rate of the state tax inversely with the counties' respective assessment levels. [*New section adopted November 5, 1974.*]

SEC. 19. [*Repealed November 5, 1974. See Section 19, below.*]

[*State Assessment*]

SEC. 19. The Board shall annually assess (1) pipelines, flumes, canals, ditches, and aqueducts lying within 2 or more counties and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity. This property shall be subject to taxation to the same extent and in the same manner as other property.

No other tax or license charge may be imposed on these companies which differs from that imposed on mercantile, manufacturing, and other business corporations. This restriction does not release a utility company from payments agreed on or required by law for a special privilege or franchise granted by a government body.

The Legislature may authorize Board assessment of property owned or used by other public utilities.

The Board may delegate to a local assessor the duty to assess a property used but not owned by a state assessee on which the taxes are to be paid by a local assessee. [*New section adopted November 5, 1974.*]

SEC. 20. [*Repealed November 5, 1974. See Section 20, below.*]

[*Maximum Tax Rates—Bonding Limits*]

SEC. 20. The Legislature may provide maximum property tax rates and bonding limits for local governments. [*New section adopted November 5, 1974.*]

SEC. 21. [*Repealed November 5, 1974. See Section 21, below.*]

[*School District Tax*]

SEC. 21. Within such limits as may be provided under Section 20 of this Article, the Legislature shall provide for an annual levy by county governing bodies of school district taxes sufficient to produce annual revenues for each district that the district's board determines are required for its schools and district functions. [*New section adopted November 5, 1974.*]

SEC. 21.5. [*Repealed November 5, 1974.*]

SEC. 22. [*Repealed November 5, 1974. See Section 22, below.*]

[*State Property Tax Limitations*]

SEC. 22. Not more than 25 percent of the total appropriations from all funds of the State shall be raised by means of taxes on real and personal property according to the value thereof. [*New section adopted November 5, 1974.*]

SEC. 23. [*Repealed November 5, 1974. See Section 23, below.*]

[*State Boundary Change*]

SEC. 23. If state boundaries change, the Legislature shall determine how property affected shall be taxed. [*New section adopted November 5, 1974.*]

SEC. 24. [*Repealed November 5, 1974. See Section 24, below.*]

[*State Taxes for Local Purposes*]

SEC. 24. The Legislature may not impose taxes for local purposes but may authorize local governments to impose them.

[*State Funds for Local Purposes*]

Money appropriated from state funds to a local government for its local purposes may be used as provided by law.

[*Subventions*]

Money subvened to a local government under Section 25 may be used for state or local purposes. [*New section adopted November 5, 1974.*]

SEC. 25. [*Repealed November 5, 1974. See Section 25, below.*]

[*Homeowners' Exemption, Reimbursement of Local Government*]

SEC. 25. The Legislature shall provide, in the same fiscal year, reimbursements to each local government for revenue lost because of Section 3(k). [*New section adopted November 5, 1974.*]

[*Ad Valorem Property Tax Revenue Allocations*]

SEC. 25.5. (a) On or after November 3, 2004, the Legislature shall not enact a statute to do any of the following:

(1) (A) Except as otherwise provided in subparagraph (B), modify the manner in which as valorem property tax revenues are allocated in accordance with subdivision (a) of Section 1 of Article XIII A so as to reduce for any fiscal year the percentage of the total amount of ad valorem property tax revenues in a county that is allocated among all of the local agencies in that county below the percentage of the total amount of those revenues that would be allocated among those agencies for the same fiscal year un-

der the statutes in effect on November 3, 2004. For purposes of this subparagraph, ''percentage'' does not include any property tax revenues referenced in paragraph (2).

(B) Beginning with the 2008–09 fiscal year and except as otherwise provided in subparagraph (C), subparagraph (A) may be suspended for a fiscal year if all of the following conditions are met:

(i) The Governor issues a proclamation that declares that, due to a severe state fiscal hardship, the suspension of subparagraph (A) is necessary.

(ii) The Legislature enacts an urgency statute, pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, that contains a suspension of subparagraph (A) for that fiscal year and does not contain any other provision.

(iii) No later than the effective date of the statute described in clause (ii), a statute is enacted that provides for the full repayment to local agencies of the total amount of revenue losses, including interest as provided by law, resulting from the modification of ad valorem property tax revenue allocations to local agencies. This full repayment shall be made not later than the end of the third fiscal year immediately following the fiscal year to which the modification applies.

(C) (i) Subparagraph (A) shall not be suspended for more than two fiscal years during any period of 10 consecutive fiscal years, which period begins with the first fiscal year for which subparagraph (A) is suspended.

(ii) Subparagraph (A) shall not be suspended during any fiscal year if the full repayment required by a statute enacted in accordance with clause (iii) of subparagraph (B) has not yet been completed.

(iii) Subparagraph (A) shall not be suspended during any fiscal year if the amount that was required to be paid to cities, counties, and cities and counties under Section 10754.11 of the Revenue and Taxation Code, as that section read on November 3, 2004, has not been paid in full prior to the effective date of the statute providing for that suspension as described in clause (ii) of subparagraph (B).

(iv) A suspension of subparagraph (A) shall not result in a total ad valorem property tax revenue loss to all local agencies within a county that exceeds 8 percent of the total amount of ad valorem property tax revenues that were allocated among all local agencies within that county for the fiscal year immediately preceding the fiscal year for which subparagraph (A) is suspended.

(2) (A) Except as otherwise provided in subparagraphs (B) and (C), restrict the authority of a city, county, or city and county to impose a tax rate under, or change the method of distributing revenues derived under, the Bradley-Burns Uniform Local Sales and Use Tax Law set forth in Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, as that law read on November 3, 2004. The restriction imposed

by this subparagraph also applies to the entitlement of a city, county, or city and county to the change in tax rate resulting from the end of the revenue exchange period, as defined in Section 7203.1 of the Revenue and Taxation Code as that section read on November 3, 2004.

(B) The Legislature may change by statute the method of distributing the revenues derived under a use tax imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law to allow the State to participate in an interstate compact or to comply with federal law.

(C) The Legislature may authorize by statute two or more specifically identified local agencies within a county, with the approval of the governing body of each of those agencies, to enter into a contract to exchange allocations of ad valorem property tax revenues for revenues derived from a tax rate imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law. The exchange under this subparagraph of revenues derived from a tax rate imposed under that law shall not require voter approval for the continued imposition of any portion of an existing tax rate from which those revenues are derived.

(3) Except as otherwise provided in subparagraph (C) of paragraph (2), change for any fiscal year the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring.

(4) Extend beyond the revenue exchange period, as defined in Section 7203.1 of the Revenue and Taxation Code as that section read on November 3, 2004, the suspension of the authority, set forth in that section on that date, of a city, county, or city and county to impose a sales and use tax rate under the Bradley-Burns Uniform Local Sales and Use Tax Law.

(5) Reduce, during any period in which the rate authority suspension described in paragraph (4) is operative, the payments to a city, county, or city and county that are required by Section 97.68 of the Revenue and Taxation Code, as that section read on November 3, 2004.

(6) Restrict the authority of a local entity to impose a transactions and use tax rate in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code), or change the method for distributing revenues derived under a transaction and use tax rate imposed under that law, as it read on November 3, 2004.

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

(1) ''Ad valorem property tax revenues'' means all revenues derived from the tax collected by a county under subdivision (a) of Section 1 of Article XIII A, regardless of any of this revenue being otherwise classified by statute.

(2) ''Local agency'' has the same meaning as specified in Section 95 of the Revenue and Taxation Code as that section read on November 3, 2004. [*New section adopted November 2, 2004.*]

[*Income Tax*]

SEC. 26. (a) Taxes on or measured by income may be imposed on persons, corporations, or other entities as prescribed by law.

(b) Interest on bonds issued by the State or a local government in the State is exempt from taxes on income.

(c) Income of a nonprofit educational institution of collegiate grade within the State of California is exempt from taxes on or measured by income if both of the following conditions are met:

(1) The income is not unrelated business income as defined by the Legislature.

(2) The income is used exclusively for educational purposes.

(d) A nonprofit organization that is exempted from taxation by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, is exempt from any business license tax or fee measured by income or gross receipts that is levied by a county or city, whether charter or general law, a city and county, a school district, a special district, or any other local agency. [*As amended June 7, 1994.*]

[*Bank and Corporation Taxes*]

SEC. 27. The Legislature, a majority of the membership of each house concurring, may tax corporations, including state and national banks, and their franchises by any method not prohibited by this Constitution or the Constitution or laws of the United States. Unless otherwise provided by the Legislature, the tax on state and national banks shall be according to or measured by their net income and shall be in lieu of all other taxes and license fees upon banks or their shares, except taxes upon real property and vehicle registration and license fees. [*As amended June 8, 1976.*]

[*Taxation of Insurance Companies*]

SEC. 28. (a) ''Insurer,'' as used in this section, includes insurance companies or associations and reciprocal or interinsurance exchanges together with their corporate or other attorneys in fact considered as a single unit, and the State Compensation Insurance Fund. As used in this paragraph, ''companies'' includes persons, partnerships, joint stock associations, companies and corporations.

(b) An annual tax is hereby imposed on each insurer doing business in this State on the base, at the rates, and subject to the deductions from the tax hereinafter specified.

(c) In the case of an insurer not transacting title insurance in this State, the ''basis of the annual tax'' is, in respect to each year, the amount of gross premiums, less return premiums, received in such year by such insurer upon its business done in this State, other than premiums received for reinsurance and for ocean marine insurance.

In the case of an insurer transacting title insurance in this State, the ''basis of the annual tax'' is, in respect to each year, all income upon business done in this State, except:

(1) Interest and dividends.

(2) Rents from real property.

(3) Profits from the sale or other disposition of investments.

(4) Income from investments.

''Investments'' as used in this subdivision includes property acquired by such insurer in the settlement or adjustment of claims against it but excludes investments in title plants and title records. Income derived directly or indirectly from the use of title plants and title records is included in the basis of the annual tax.

In the case of an insurer transacting title insurance in this State which has a trust department and does a trust business under the banking laws of this State, there shall be excluded from the basis of the annual tax imposed by this section, the income of, and from the assets of, such trust department and such trust business, if such income is taxed by this State or included in the measure of any tax imposed by this State.

(d) The rate of the tax to be applied to the basis of the annual tax in respect to each year is 2.35 percent.

(f) The tax imposed on insurers by this section is in lieu of all other taxes and licenses, state, county, and municipal, upon such insurers and their property, except:

(1) Taxes upon their real estate.

(2) That an insurer transacting title insurance in this State which has a trust department or does a trust business under the banking laws of this State is subject to taxation with respect to such trust department or trust business to the same extent and in the same manner as trust companies and the trust departments of banks doing business in this State.

(3) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon California insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this State; so long as such laws of such other state or

country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions, of whatever kind shall be imposed upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in California. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on California insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this paragraph (3) of subdivision (f).

The provisions of this paragraph (3) of subdivision (f) shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property nor as to special purpose obligations or assessments heretofore imposed by another state or foreign country in connection with particular kinds of insurance, other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration in determining the propriety and extent of retaliatory action under this paragraph (3) of subdivision (f).

For the purposes of this paragraph (3) of subdivision (f) the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state in which is located its principal place of business in the United States.

In the case of an insurer formed under the laws of Canada or a province thereof, its domicile shall be deemed to be that province in which its head office is situated.

The provisions of this paragraph (3) of subdivision (f) shall also be applicable to reciprocals or interinsurance exchanges and fraternal benefit societies.

(4) The tax on ocean marine insurance.

(5) Motor vehicle and other vehicle registration license fees and any other tax or license fee imposed by the State upon vehicles, motor vehicles or the operation thereof.

(6) That each corporate or other attorney in fact of a reciprocal or interinsurance exchange shall be subject to all taxes imposed upon corporations or others doing business in the State, other than taxes on income derived from its principal business as attorney in fact.

A corporate or other attorney in fact of each exchange shall annually compute the amount of tax that would be payable by it under prevailing law except for the provisions of this section, and any management fee due from each exchange to its corporate or other attorney in fact shall be reduced pro tanto by a sum equivalent to the amount so computed.

(g) Every insurer transacting the business of ocean marine insurance in this State shall annually pay to the State a tax measured by that proportion of the underwriting profit of such insurer from such insurance written in the United States, which the gross premiums of the insurer from such insurance written in this State bear to the gross premiums of the insurer from such insurance written within the United States, at the rate of 5 per centum, which tax shall be in lieu of all other taxes and licenses, state, county and municipal, upon such insurer, except taxes upon real estate, and such other taxes as may be assessed or levied against such insurer on account of any other class of insurance written by it. The Legislature shall define the terms ''ocean marine insurance'' and ''underwriting profit,'' and shall provide for the assessment, levy, collection and enforcement of the ocean marine tax.

(h) The taxes provided for by this section shall be assessed by the State Board of Equalization.

(i) The Legislature, a majority of all the members elected to each of the two houses voting in favor thereof, may by law change the rate or rates of taxes herein imposed upon insurers.

(j) This section is not intended to and does not change the law as it has previously existed with respect to the meaning of the words ''gross premiums, less return premiums, received'' as used in this article. [*As amended June 8, 1976.*]

[*Local Government Tax Sharing*]

SEC. 29. (a) The Legislature may authorize counties, cities and counties, and cities to enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them that is collected for them by the State. Before the contract becomes operative, it shall be authorized by a majority of those voting on the question in each jurisdiction at a general or direct primary election.

(b) Notwithstanding subdivision (a), on and after the operative date of this subdivision, counties, cities and counties, and cities may enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, or any successor provisions, that is collected for them by the State, if the ordinance or resolution proposing each contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract. [*As amended November 3, 1998.*]

[*Tax Liens—Presumption of Payment of Taxes*]

SEC. 30. Every tax shall be conclusively presumed to have been paid after 30 years from the time it became a lien unless the property subject to the lien has been sold in the manner provided by the Legislature for the payment of the tax. [*New section adopted November 5, 1974.*]

[*Power to Tax*]

SEC. 31. The power to tax may not be surrendered or suspended by grant or contract. [*New section adopted November 5, 1974.*]

[*Proceedings Relating to Collection*]

SEC. 32. No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature. [*New section adopted November 5, 1974.*]

[*Legislature to Enact Laws*]

SEC. 33. The Legislature shall pass all laws necessary to carry out the provisions of this article. [*New section adopted November 5, 1974.*]

[*Food Products—Taxation*]

SEC. 34. Neither the State of California nor any of its political subdivisions shall levy or collect a sales or use tax on the sale of, or the storage, use or other consumption in this State of food products for human consumption except as provided by statute as of the effective date of this section. [*New section adopted November 3, 1992. Operative January 1, 1993. Initiative measure.*]

[*Local Public Safety Services*]

SEC. 35. (a) The people of the State of California find and declare all of the following:

(1) Public safety services are critically important to the security and well-being of the State's citizens and to the growth and revitalization of the State's economic base.

(2) The protection of the public safety is the first responsibility of local government and local officials have an obligation to give priority to the provision of adequate public safety services.

(3) In order to assist local government in maintaining a sufficient level of public safety services, the proceeds of the tax enacted pursuant to this section shall be designated exclusively for public safety.

(b) In addition to any sales and use taxes imposed by the Legislature, the following sales and use taxes are hereby imposed:

(1) For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers at the rate of ½ percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this State on and after January 1, 1994.

(2) An excise tax is hereby imposed on the storage, use, or other consumption in this State of tangible personal property purchased from any

retailer on and after January 1, 1994, for storage, use, or other consumption in this State at the rate of ½ percent of the sales price of the property.

(c) The Sales and Use Tax Law, including any amendments made thereto on or after the effective date of this section, shall be applicable to the taxes imposed by subdivision (b).

(d) (1) All revenues, less refunds, derived from the taxes imposed pursuant to subdivision (b) shall be transferred to the Local Public Safety Fund for allocation by the Legislature, as prescribed by statute, to counties in which either of the following occurs:

(A) The board of supervisors, by a majority vote of its membership, requests an allocation from the Local Public Safety Fund in a manner prescribed by statute.

(B) A majority of the county's voters voting thereon approve the addition of this section.

(2) Moneys in the Local Public Safety Fund shall be allocated for use exclusively for public safety services of local agencies.

(e) Revenues derived from the taxes imposed pursuant to subdivision (b) shall not be considered proceeds of taxes for purposes of Article XIII B or State General Fund proceeds of taxes within the meaning of Article XVI.

(f) Except for the provisions of Section 34, this section shall supersede any other provisions of this Constitution that are in conflict with the provisions of this section, including, but not limited to, Section 9 of Article II. [*New section adopted November 2, 1993.*]

SEC. 37. [*Repealed November 5, 1974.*]

SEC. 37.5. [*Repealed November 5, 1974.*]

SEC. 38. [*Repealed November 5, 1974.*]

SEC. 39. [*Repealed November 5, 1974.*]

SEC. 40. [*Repealed November 5, 1974.*]

SEC. 41. [*Repealed November 5, 1974.*]

SEC. 42. [*Repealed November 5, 1974.*]

SEC. 44. [*Repealed November 5, 1974.*]

ARTICLE XIII A*

TAX LIMITATION

[*Maximum Ad Valorem Tax on Real Property—Apportionment of Tax Revenues*]

SECTION 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such

* New Article XIII A adopted June 6, 1978. Initiative measure.

property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

[*Exceptions to Limitation*]

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any of the following:

(1) Indebtedness approved by the voters prior to July 1, 1978.

(2) Bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(3) Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements:

(A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIII A, Section 1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses.

(B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.

(C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.

(D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects.

(c) Notwithstanding any other provisions of law or of this Constitution, school districts, community college districts, and county offices of education may levy a 55 percent vote ad valorem tax pursuant to subdivision (b). [*As amended November 7, 2000. Initiative measure.*]

[*Valuation of Real Property—Appraised Value After 1975 Assessment—Replacement Dwelling*]

SEC. 2. (a) The ''full cash value'' means the county assessor's valuation of real property as shown on the 1975–76 tax bill under ''full cash value'' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975–76 full cash value may be reassessed to reflect that valuation. For purposes of this section, ''newly constructed'' does not include real property that is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. Also, the term ''newly constructed'' does not include the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.

However, the Legislature may provide that, under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, ''any person over the age of 55 years'' includes a married couple one member of which is over the age of 55 years. For purposes of this section, ''replacement dwelling'' means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after November 5, 1986.

In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this State. For purposes of this paragraph, ''local affected agency'' means any city, special district, school district, or community college district that receives an annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after

the date the county adopted the provisions of this subdivision relating to transfer of base year value, but shall not apply to any replacement dwelling that was purchased or newly constructed before November 9, 1988.

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.

[*Full Cash Value Reflecting Inflationary Rate*]

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction, or other factors causing a decline in value.

[*''Newly Constructed''*]

(c) For purposes of subdivision (a), the Legislature may provide that the term ''newly constructed'' does not include any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, that is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a single- or multiple-family dwelling that is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely disabled person.

(4) The construction or installation of seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies, that are constructed or installed in existing buildings after the effective date of this paragraph. The Legislature shall define eligible improvements. This exclusion does not apply to seismic safety reconstruction or improvements that qualify for exclusion pursuant to the last sentence of the first paragraph of subdivision (a).

(5) The construction, installation, removal, or modification on or after the effective date of this paragraph of any portion or structural component of an existing building or structure if the construction, installation, removal, or modification is for the purpose of making the building more accessible to, or more usable by, a disabled person.

[*''Change in Ownership''*]

(d) For purposes of this section, the term ''change in ownership'' does not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property that occur after the provisions of this subdivision take effect.

[*Disasters—Replacement Property*]

(e) (1) Notwithstanding any other provision of this section, the Legislature shall provide that the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

(2) Except as provided in paragraph (3), this subdivision shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985, and to the determination of base year values for the 1985–86 fiscal year and fiscal years thereafter.

(3) In addition to the transfer of base year value of property within the same county that is permitted by paragraph (1), the Legislature may authorize each county board of supervisors to adopt, after consultation with affected local agencies within the county, an ordinance allowing the transfer of the base year value of property that is located within another county in the State and is substantially damaged or destroyed by a disaster, as declared by the Governor, to comparable replacement property of equal or lesser value that is located within the adopting county and is acquired or newly constructed within three years of the substantial damage or destruction of the original property as a replacement for that property. The scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to this paragraph shall not exceed the scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to subdivision (a). For purposes of this paragraph, ''affected local agency'' means any city, special district, school district, or community college district that receives an annual allocation of ad valorem property tax revenues. This paragraph shall apply to any comparable replacement property that is acquired or newly constructed as a replacement for property substantially damaged or destroyed

by a disaster, as declared by the Governor, occurring on or after October 20, 1991, and to the determination of base year values for the 1991–92 fiscal year and fiscal years thereafter.

(f) For the purposes of subdivision (e):

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its value immediately before the disaster. Damage includes a diminution in the value of property as a result of restricted access caused by the disaster.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property that it replaces, and if the fair market value of the acquired property is comparable to the fair market value of the replaced property prior to the disaster.

[*Real Property Transfers between Spouses*]

(g) For purposes of subdivision (a), the terms ''purchased'' and ''change in ownership'' do not include the purchase or transfer of real property between spouses since March 1, 1975, including, but not limited to, all of the following:

(1) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.

(2) Transfers to a spouse that take effect upon the death of a spouse.

(3) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(4) The creation, transfer, or termination, solely between spouses, of any coowner's interest.

(5) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

[*Real Property Transfers between Family Members*]

(h) (1) For purposes of subdivision (a), the terms ''purchased'' and ''change in ownership'' do not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first one million dollars ($1,000,000) of the full cash value of all other real property between parents and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(2) (A) Subject to subparagraph (B), commencing with purchases or transfers that occur on or after the date upon which the measure adding

this paragraph becomes effective, the exclusion established by paragraph (1) also applies to a purchase or transfer of real property between grandparents and their grandchild or grandchildren, as defined by the Legislature, that otherwise qualifies under paragraph (1), if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of the purchase or transfer.

(B) A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (1), and the full cash value of a principal residence that fails to qualify for exclusion as a result of the preceding sentence, shall be included in applying, for purposes of subparagraph (A), the one million dollar ($1,000,000) full cash value limit specified in paragraph (1).

[*Contaminated Property*]

(i) (1) Notwithstanding any other provision of this section, the Legislature shall provide with respect to a qualified contaminated property, as defined in paragraph (2), that either, but not both, of the following shall apply:

(A) (i) Subject to the limitation of clause (ii), the base year value of the qualified contaminated property, as adjusted as authorized by subdivision (b), may be transferred to a replacement property that is acquired or newly constructed as a replacement for the qualified contaminated property, if the replacement real property has a fair market value that is equal to or less than the fair market value of the qualified contaminated property if that property were not contaminated and, except as otherwise provided by this clause, is located within the same county. The base year value of the qualified contaminated property may be transferred to a replacement real property located within another county if the board of supervisors of that other county has, after consultation with the affected local agencies within that county, adopted a resolution authorizing an intercounty transfer of base year value as so described.

(ii) This subparagraph applies only to replacement property that is acquired or newly constructed within five years after ownership in the qualified contaminated property is sold or otherwise transferred.

(B) In the case in which the remediation of the environmental problems on the qualified contaminated property requires the destruction of, or results in substantial damage to, a structure located on that property, the term ''new construction'' does not include the repair of a substantially damaged structure, or the construction of a structure replacing a destroyed structure

on the qualified contaminated property, performed after the remediation of the environmental problems on that property, provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

(2) For purposes of this subdivision, ''qualified contaminated property'' means residential or nonresidential real property that is all of the following:

(A) In the case of residential real property, rendered uninhabitable, and in the case of nonresidential real property, rendered unusable, as the result of either environmental problems, in the nature of and including, but not limited to, the presence of toxic or hazardous materials, or the remediation of those environmental problems, except where the existence of the environmental problems was known to the owner, or to a related individual or entity as described in paragraph (3), at the time the real property was acquired or constructed. For purposes of this subparagraph, residential real property is ''uninhabitable'' if that property, as a result of health hazards caused by or associated with the environmental problems, is unfit for human habitation, and nonresidential real property is ''unusable'' if that property, as a result of health hazards caused by or associated with the environmental problems, is unhealthy and unsuitable for occupancy.

(B) Located on a site that has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(C) Real property that contains a structure or structures thereon prior to the completion of environmental cleanup activities, and that structure or structures are substantially damaged or destroyed as a result of those environmental cleanup activities.

(D) Stipulated by the lead governmental agency, with respect to the environmental problems or environmental cleanup of the real property, not to have been rendered uninhabitable or unusable, as applicable, as described in subparagraph (A), by any act or omission in which an owner of that real property participated or acquiesced.

(3) It shall be rebuttably presumed that an owner of the real property participated or acquiesced in any act or omission that rendered the real property uninhabitable or unusable, as applicable, if that owner is related to any individual or entity that committed that act or omission in any of the following ways:

(A) Is a spouse, parent, child, grandparent, grandchild, or sibling of that individual.

(B) Is a corporate parent, subsidiary, or affiliate of that entity.

(C) Is an owner of, or has control of, that entity.

(D) Is owned or controlled by that entity.

If this presumption is not overcome, the owner shall not receive the relief provided for in subparagraph (A) or (B) of paragraph (1). The pre-

sumption may be overcome by presentation of satisfactory evidence to the assessor, who shall not be bound by the findings of the lead governmental agency in determining whether the presumption has been overcome.

(4) This subdivision applies only to replacement property that is acquired or constructed on or after January 1, 1995, and to property repairs performed on or after that date.

[*Effectiveness of Amendments*]

(j) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, shall be effective for changes in ownership that occur, and new construction that is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, shall be effective for changes in ownership that occur, and new construction that is completed, on or after the effective date of the amendment. [*As amended November 3, 1998.*]

[*Changes in State Taxes—Vote Requirement*]

SEC. 3. From and after the effective date of this article, any changes in state taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed. [*New section adopted June 6, 1978. Initiative measure.*]

[*Imposition of Special Taxes*]

SEC. 4. Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district. [*New section adopted June 6, 1978. Initiative measure.*]

[*Effective Date of Article*]

SEC. 5. This article shall take effect for the tax year beginning on July 1 following the passage of this Amendment, except Section 3 which shall become effective upon the passage of this article. [*New section adopted June 6, 1978. Initiative measure.*]

[*Severability*]

SEC. 6. If any section, part, clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect. [*New section adopted June 6, 1978. Initiative measure.*]

[*California Children and Families First Act of 1998*]

SEC. 7. Section 3 of this article does not apply to the California Children and Families First Act of 1998. [*New section adopted November 3, 1998. Initiative measure.*]

ARTICLE XIII B*

GOVERNMENT SPENDING LIMITATION

[*Total Annual Appropriations*]

SECTION 1. The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article. [*As amended June 5, 1990. Operative July 1, 1990.*]

[*Appropriations Limit Annual Calculation—Review*]

SEC. 1.5. The annual calculation of the appropriations limit under this article for each entity of local government shall be reviewed as part of an annual financial audit. [*New section adopted June 5, 1990. Operative July 1, 1990.*]

[*Revenues in Excess of Limitation*]

SEC. 2. (a)(1) Fifty percent of all revenues received by the State in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the State in compliance with this article during that fiscal year and the fiscal year immediately following it shall be transferred and allocated, from a fund established for that purpose, pursuant to Section 8.5 of Article XVI.

(2) Fifty percent of all revenues received by the State in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the State in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

(b) All revenues received by an entity of government, other than the State, in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the entity in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years. [*As amended June 5, 1990. Operative July 1, 1990.*]

* New Article XIII B adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.

[*Appropriations Limit—Adjustments*]

SEC. 3. The appropriations limit for any fiscal year pursuant to Sec. 1 shall be adjusted as follows:

(a) In the event that the financial responsibility of providing services is transferred, in whole or in part, whether by annexation, incorporation or otherwise, from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.

(b) In the event that the financial responsibility of providing services is transferred, in whole or in part, from an entity of government to a private entity, or the financial source for the provision of services is transferred, in whole or in part, from other revenues of an entity of government, to regulatory licenses, user charges or user fees, then for the year of such transfer the appropriations limit of such entity of government shall be decreased accordingly.

(c) (1) In the event an emergency is declared by the legislative body of an entity of government, the appropriations limit of the affected entity of government may be exceeded provided that the appropriations limits in the following three years are reduced accordingly to prevent an aggregate increase in appropriations resulting from the emergency.

(2) In the event an emergency is declared by the Governor, appropriations approved by a two-thirds vote of the legislative body of an affected entity of government to an emergency account for expenditures relating to that emergency shall not constitute appropriations subject to limitation. As used in this paragraph, ''emergency'' means the existence, as declared by the Governor, of conditions of disaster or extreme peril to the safety of persons and property within the State, or parts thereof, caused by such conditions as attack or probable or imminent attack by an enemy of the United States, fire, flood, drought, storm, civil disorder, earthquake, or volcanic eruption. [*As amended June 5, 1990. Operative July 1, 1990.*]

[*Appropriations Limit—Establishment or Change*]

SEC. 4. The appropriations limit imposed on any new or existing entity of government by this Article may be established or changed by the electors of such entity, subject to and in conformity with constitutional and statutory voting requirements. The duration of any such change shall be as determined by said electors, but shall in no event exceed four years from the most recent vote of said electors creating or continuing such change. [*New section adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.*]

[*Contingency, Emergency, Unemployment, Etc., Funds—Contributions—Withdrawals—Transfers*]

SEC. 5. Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of (or authorizations to expend) such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation. [*New section adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.*]

[*Prudent State Reserve*]

SEC. 5.5. *Prudent State Reserve.* The Legislature shall establish a prudent state reserve fund in such amount as it shall deem reasonable and necessary. Contributions to, and withdrawals from, the fund shall be subject to the provisions of Section 5 of this Article. [*New section adopted November 8, 1988. Initiative measure.*]

[*Mandates of New Programs or Higher Levels of Service*]

SEC. 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

(1) Legislative mandates requested by the local agency affected.

(2) Legislation defining a new crime or changing an existing definition of a crime.

(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(b) (1) Except as provided in paragraph (2), for the 2005–06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004–05 fiscal year that have not been paid prior to the 2005–06 fiscal year may be paid over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility. [*As amended November 2, 2004.*]

[*Bonded Indebtedness*]

SEC. 7. Nothing in this Article shall be construed to impair the ability of the State or of any local government to meet its obligations with respect to existing or future bonded indebtedness. [*New section adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.*]

[*Definitions*]

SEC. 8. As used in this article and except as otherwise expressly provided herein:

(a) ''Appropriations subject to limitation'' of the State means any authorization to expend during a fiscal year the proceeds of taxes levied by or for the State, exclusive of state subventions for the use and operation of local government (other than subventions made pursuant to Section 6) and further exclusive of refunds of taxes, benefit payments from retirement, unemployment insurance, and disability insurance funds.

(b) ''Appropriations subject to limitation'' of an entity of local government means any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes.

(c) ''Proceeds of taxes'' shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation,

product, or service, and (2) the investment of tax revenues. With respect to any local government, ''proceeds of taxes'' shall include subventions received from the State, other than pursuant to Section 6, and, with respect to the State, proceeds of taxes shall exclude such subventions.

(d) ''Local government'' means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the State.

(e) (1) ''Change in the cost of living'' for the State, a school district, or a community college district means the percentage change in California per capita personal income from the preceding year.

(2) ''Change in the cost of living'' for an entity of local government, other than a school district or a community college district, shall be either (A) the percentage change in California per capita personal income from the preceding year, or (B) the percentage change in the local assessment roll from the preceding year for the jurisdiction due to the addition of local nonresidential new construction. Each entity of local government shall select its change in the cost of living pursuant to this paragraph annually by a recorded vote of the entity's governing body.

(f) ''Change in population'' of any entity of government, other than the State, a school district, or a community college district, shall be determined by a method prescribed by the Legislature.

''Change in population'' of a school district or a community college district shall be the percentage change in the average daily attendance of the school district or community college district from the preceding fiscal year, as determined by a method prescribed by the Legislature.

''Change in population'' of the State shall be determined by adding (1) the percentage change in the State's population multiplied by the percentage of the State's budget in the prior fiscal year that is expended for other than educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges, and (2) the percentage change in the total statewide average daily attendance in kindergarten and grades one to 12, inclusive, and the community colleges, multiplied by the percentage of the State's budget in the prior fiscal year that is expended for educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges.

Any determination of population pursuant to this subdivision, other than that measured by average daily attendance, shall be revised, as necessary, to reflect the periodic census conducted by the United States Department of Commerce, or successor department.

(g) ''Debt service'' means appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, or on bonded indebtedness there-

after approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose.

(h) The ''appropriations limit'' of each entity of government for each fiscal year is that amount which total annual appropriations subject to limitation may not exceed under Sections 1 and 3. However, the ''appropriations limit'' of each entity of government for fiscal year 1978–79 is the total of the appropriations subject to limitation of the entity for that fiscal year. For fiscal year 1978–79, state subventions to local governments, exclusive of federal grants, are deemed to have been derived from the proceeds of state taxes.

(i) Except as otherwise provided in Section 5, ''appropriations subject to limitation'' do not include local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the State, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities. [*As amended June 5, 1990. Operative July 1, 1990.*]

[*Exceptions to Appropriations Subject to Limitation*]

SEC. 9. ''Appropriations subject to limitation'' for each entity of government do not include:

(a) Appropriations for debt service.

(b) Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly.

(c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977–78 fiscal year levy an ad valorem tax on property in excess of 12½ cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.

(d) Appropriations for all qualified capital outlay projects, as defined by the Legislature.

(e) Appropriations of revenue which are derived from any of the following:

(1) That portion of the taxes imposed on motor vehicle fuels for use in motor vehicles upon public streets and highways at a rate of more than nine cents ($0.09) per gallon.

(2) Sales and use taxes collected on that increment of the tax specified in paragraph (1).

(3) That portion of the weight fee imposed on commercial vehicles which exceeds the weight fee imposed on those vehicles on January 1, 1990. [*As amended June 5, 1990. Operative July 1, 1990.*]

[*Effective Date of Article*]

SEC. 10. This Article shall be effective commencing with the first day of the fiscal year following its adoption. [*New section adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.*]

[*Appropriations Limit on or after July 1, 1990*]

SEC. 10.5. For fiscal years beginning on or after July 1, 1990, the appropriations limit of each entity of government shall be the appropriations limit for the 1986–87 fiscal year adjusted for the changes made from that fiscal year pursuant to this article, as amended by the measure adding this section, adjusted for the changes required by Section 3. [*New section adopted June 5, 1990. Operative July 1, 1990.*]

[*Category Added or Removed from Appropriations Subject to Limitation—Severability*]

SEC. 11. If any appropriation category shall be added to or removed from appropriations subject to limitation, pursuant to final judgment of any court of competent jurisdiction and any appeal therefrom, the appropriations limit shall be adjusted accordingly. If any section, part, clause or phrase in this Article is for any reason held invalid or unconstitutional, the remaining portions of this Article shall not be affected but shall remain in full force and effect. [*New section adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.*]

[*Exceptions to Appropriations Subject to Limitation*]

SEC. 12. ''Appropriations subject to limitation'' of each entity of government shall not include appropriations of revenue from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988. [*New section adopted November 8, 1988. Initiative measure.*]

[*Exceptions to Appropriations Subject to Limitation*]

SEC. 13. ''Appropriations subject to limitation'' of each entity of government shall not include appropriations of revenue from the California Children and Families First Trust Fund created by the California Children and Families First Act of 1998. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Children and Families First Trust Fund. The surtax created by the Cali-

fornia Children and Families First Act of 1998 shall not be considered General Fund revenues for the purposes of Section 8 of Article XVI. [*New section adopted November 3, 1998. Initiative measure.*]

ARTICLE XIII C *

VOTER APPROVAL FOR LOCAL TAX LEVIES

SECTION 1. Definitions. As used in this article:

(a) ''General tax'' means any tax imposed for general governmental purposes.

(b) ''Local government'' means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

(c) ''Special district'' means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(d) ''Special tax'' means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund. [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased

* New Article XIII C adopted November 5, 1996. Initiative measure.

if it is imposed at a rate not higher than the maximum rate so approved. [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 3. Initiative Power for Local Taxes, Assessments, Fees and Charges. Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives. [*New section adopted November 5, 1996. Initiative measure.*]

ARTICLE XIII D*

ASSESSMENT AND PROPERTY-RELATED FEE REFORM

SECTION 1. Application. Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:

(a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.

(b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.

(c) Affect existing laws relating to the imposition of timber yield taxes. [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 2. Definitions. As used in this article:

(a) ''Agency'' means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(b) ''Assessment'' means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. ''Assessment'' includes, but is not limited to, ''special assessment,'' ''benefit assessment,'' ''maintenance assessment'' and ''special assessment tax.''

(c) ''Capital cost'' means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) ''District'' means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) ''Fee'' or ''charge'' means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon

* New Article XIII D adopted November 5, 1996. Initiative measure.

a person as an incident of property ownership, including a user fee or charge for a property-related service.

(f) ''Maintenance and operation expenses'' means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) ''Property ownership'' shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) ''Property-related service'' means a public service having a direct relationship to property ownership.

(i) ''Special benefit'' means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute ''special benefit.'' [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 3. Property Taxes, Assessments, Fees and Charges Limited. (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property-related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership. [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 4. Procedures and Requirements for All Assessments. (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property-related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assess-

ment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall

not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e). [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 5. Effective Date. Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4. [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 6. Property-Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property-related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section. [*New section adopted November 5, 1996. Initiative measure.*]

ARTICLE XIV. [*Repealed June 8, 1976. See Article XIV, below.*]

ARTICLE XIV*

LABOR RELATIONS

SECTION 1. [*Repealed June 8, 1976. See Section 1, below.*]

[*Minimum Wages and General Welfare of Employees*]

SECTION 1. The Legislature may provide for minimum wages and for the general welfare of employees and for those purposes may confer on a commission legislative, executive, and judicial powers. [*New section adopted June 8, 1976.*]

SEC. 2. [*Repealed June 8, 1976. See Section 2, below.*]

[*Eight-hour Workday*]

SEC. 2. Worktime of mechanics or workers on public works may not exceed eight hours a day except in wartime or extraordinary emergencies that endanger life or property. The Legislature shall provide for enforcement of this section. [*New section adopted June 8, 1976.*]

SEC. 3. [*Repealed June 8, 1976. See Section 3, below.*]

[*Mechanics' Liens*]

SEC. 3. Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens. [*New section adopted June 8, 1976.*]

SEC. 4. [*Repealed June 8, 1976. See Section 4, below.*]

[*Workers' Compensation*]

SEC. 4. The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate

* New Article XIV adopted June 8, 1976.

provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a state compensation insurance fund; full provision for otherwise securing the payment of compensation; and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the state government.

The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

The Legislature shall have power to provide for the payment of an award to the State in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the state compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed. [*New section adopted June 8, 1976.*]

SEC. 5. [*Repealed November 6, 1990. See Section 5, below.*]

[*Inmate Labor*]

SECTION 5. (a) The Director of Corrections or any county Sheriff or other local government official charged with jail operations, may enter into contracts with public entities, nonprofit or for profit organizations, entities, or businesses for the purpose of conducting programs which use inmate labor. Such programs shall be operated and implemented pursuant to statutes enacted by or in accordance with the provisions of the Prison Inmate Labor Initiative of 1990, and by rules and regulations prescribed by the Director of Corrections and, for county jail programs, by local ordinances.

(b) No contract shall be executed with an employer that will initiate employment by inmates in the same job classification as non-inmate employees of the same employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990. Total daily hours worked by inmates employed in the same job classification as non-inmate employees of the same employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990, shall not exceed, for the duration of the strike, the average daily hours worked for the preceding six months, or if the program has been in operation for less than six months, the average for the period of operation.

(c) Nothing in this section shall be interpreted as creating a right of inmates to work. [*New section adopted November 6, 1990. Initiative measure.*]

ARTICLE XV. [*Repealed June 8, 1976. See Article XV, below.*]

ARTICLE XV*

USURY

[*Rate of Interest*]

SECTION 1. The rate of interest upon the loan or forbearance of any money, goods, or things in action, or on accounts after demand, shall be 7 percent per annum but it shall be competent for the parties to any loan or forbearance of any money, goods or things in action to contract in writing for a rate of interest:

(1) For any loan or forbearance of any money, goods, or things in action, if the money, goods, or things in action are for use primarily for per-

* New Article XV adopted June 8, 1976.

sonal, family, or household purposes, at a rate not exceeding 10 percent per annum; provided, however, that any loan or forbearance of any money, goods or things in action the proceeds of which are used primarily for the purchase, construction or improvement of real property shall not be deemed to be a use primarily for personal, family or household purposes; or

(2) For any loan or forbearance of any money, goods, or things in action for any use other than specified in paragraph (1), at a rate not exceeding the higher of (a) 10 percent per annum or (b) 5 percent per annum plus the rate prevailing on the 25th day of the month preceding the earlier of (i) the date of execution of the contract to make the loan or forbearance, or (ii) the date of making the loan or forbearance established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13a of the Federal Reserve Act as now in effect or hereafter from time to time amended (or if there is no such single determinable rate of advances, the closest counterpart of such rate as shall be designated by the Superintendent of Banks of the State of California unless some other person or agency is delegated such authority by the Legislature).

[*Charges*]

No person, association, copartnership or corporation shall by charging any fee, bonus, commission, discount or other compensation receive from a borrower more than the interest authorized by this section upon any loan or forbearance of any money, goods or things in action.

[*Exemptions*]

However, none of the above restrictions shall apply to any obligations of, loans made by, or forbearances of, any building and loan association as defined in and which is operated under that certain act known as the ''Building and Loan Association Act,'' approved May 5, 1931, as amended, or to any corporation incorporated in the manner prescribed in and operating under that certain act entitled ''An act defining industrial loan companies, providing for their incorporation, powers and supervision,'' approved May 18, 1917, as amended, or any corporation incorporated in the manner prescribed in and operating under that certain act entitled ''An act defining credit unions, providing for their incorporation, powers, management and supervision,'' approved March 31, 1927, as amended or any duly licensed pawnbroker or personal property broker, or any loans made or arranged by any person licensed as a real estate broker by the State of California and secured in whole or in part by liens on real property, or any bank as defined in and operating under that certain act known as the ''Bank Act,'' approved March 1, 1909, as amended, or any

bank created and operating under and pursuant to any laws of this State or of the United States of America or any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code in loaning or advancing money in connection with any activity mentioned in said title or any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, live stock, poultry and bee products on a cooperative nonprofit basis in loaning or advancing money to the members thereof or in connection with any such business or any corporation securing money or credit from any federal intermediate credit bank, organized and existing pursuant to the provisions of an act of Congress entitled ''Agricultural Credits Act of 1923,'' as amended in loaning or advancing credit so secured, or any other class of persons authorized by statute, or to any successor in interest to any loan or forbearance exempted under this article, nor shall any such charge of any said exempted classes of persons be considered in any action or for any purpose as increasing or affecting or as connected with the rate of interest hereinbefore fixed. The Legislature may from time to time prescribe the maximum rate per annum of, or provide for the supervision, or the filing of a schedule of, or in any manner fix, regulate or limit, the fees, bonuses, commissions, discounts or other compensation which all or any of the said exempted classes of persons may charge or receive from a borrower in connection with any loan or forbearance of any money, goods or things in action.

[*Judgments Rendered in Court—Rate of Interest*]

The rate of interest upon a judgment rendered in any court of this State shall be set by the Legislature at not more than 10 percent per annum. Such rate may be variable and based upon interest rates charged by federal agencies or economic indicators, or both.

In the absence of the setting of such rate by the Legislature, the rate of interest on any judgment rendered in any court of the State shall be 7 percent per annum.

[*Scope of Section*]

The provisions of this section shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith. [*As amended November 6, 1979.*]

SEC. 2. [*Repealed June 8, 1976.*]

SEC. 3. [*Repealed June 8, 1976.*]

ARTICLE XVI

PUBLIC FINANCE

[*Heading as amended November 5, 1974.*]

[*State Indebtedness—Limitation—Two-thirds Vote to Submit Bond Law—Submission of Law to Electors*]

SECTION 1. The Legislature shall not, in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars ($300,000), except in case of war to repel invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within 50 years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged, and such law may make provision for a sinking fund to pay the principal of such debt or liability to commence at a time after the incurring of such debt or liability of not more than a period of one-fourth of the time of maturity of such debt or liability; but no such law shall take effect unless it has been passed by a two-thirds vote of all the members elected to each house of the Legislature and until, at a general election or at a direct primary, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by authority of such law shall be applied only to the specific object therein stated or to the payment of the debt thereby created. Full publicity as to matters to be voted upon by the people is afforded by the setting out of the complete text of the proposed laws, together with the arguments for and against them, in the ballot pamphlet mailed to each elector preceding the election at which they are submitted, and the only requirement for publication of such law shall be that it be set out at length in ballot pamphlets which the Secretary of State shall cause to be printed. The Legislature may, at any time after the approval of such law by the people, reduce the amount of the indebtedness authorized by the law to an amount not less than the amount contracted at the time of the reduction, or it may repeal the law if no debt shall have been contracted in pursuance thereof.

Notwithstanding any other provision of this Constitution, Members of the Legislature who are required to meet with the State Allocation Board shall have equal rights and duties with the nonlegislative members to vote and act upon matters pending or coming before such board for the allocation and apportionment of funds to school districts for school construction purposes or purposes related thereto.

Notwithstanding any other provision of this constitution, or of any bond act to the contrary, if any general obligation bonds of the State heretofore or hereafter authorized by vote of the people have been offered for sale and not sold, the Legislature may raise the maximum rate of interest payable on all general obligation bonds authorized but not sold, whether or not such bonds have been offered for sale, by a statute passed by a two-thirds vote of all members elected to each house thereof.

The provisions of Senate Bill No. 763† of the 1969 Regular Session, which authorize an increase of the state general obligation bond maximum interest rate from 5 percent to an amount not in excess of 7 percent and eliminate the maximum rate of interest payable on notes given in anticipation of the sale of such bonds, are hereby ratified. [*As amended June 2, 1970.*]

[*Budget Deficits*]

SEC. 1.3. (a) For the purposes of Section 1, a ''single object or work,'' for which the Legislature may create a debt or liability in excess of three hundred thousand dollars ($300,000) subject to the requirements set forth in Section 1, includes the funding of an accumulated state budget deficit to the extent, and in the amount, that funding is authorized in a measure submitted to the voters at the March 2, 2004, statewide primary election.

(b) As used in subdivision (a), ''accumulated state budget deficit'' means the aggregate of both of the following, as certified by the Director of Finance:

(1) The estimated negative balance of the Special Fund for Economic Uncertainties arising on or before June 30, 2004, not including the effect of the estimated amount of net proceeds of any bonds issued or to be issued pursuant to the California Fiscal Recovery Financing Act (Title 17 (commencing with Section 99000) of the Government Code) and any bonds issued or to be issued pursuant to the measure submitted to the voters at the March 2, 2004, statewide primary election as described in subdivision (a).

(2) Other General Fund obligations incurred by the State prior to June 30, 2004, to the extent not included in that negative balance.

(c) Subsequent to the issuance of any state bonds described in subdivision (a), the State may not obtain moneys to fund a year-end state budget deficit, as may be defined by statute, pursuant to any of the following: (1) indebtedness incurred pursuant to Section 1 of this article, (2) a debt obligation under which funds to repay that obligation are derived solely from a designated source of revenue, or (3) a bond or similar instrument for the borrowing of moneys for which there is no legal obligation of repayment. This subdivision does not apply to funding obtained through a short-term obligation incurred in anticipation of the receipt of tax proceeds or other

† Chapter 740.

revenues that may be applied to the payment of that obligation, for the purposes and not exceeding the amounts of existing appropriations to which the resulting proceeds are to be applied. For purposes of this subdivision, ''year-end state budget deficit'' does not include an obligation within the accumulated state budget deficit as defined by subdivision (b). [*New section adopted March 2, 2004.*]

[*General Obligation Bond Proceeds Fund*]

SEC. 1.5. The Legislature may create and establish a ''General Obligation Bond Proceeds Fund'' in the State Treasury, and may provide for the proceeds of the sale of general obligation bonds of the State heretofore or hereafter issued, including any sums paid as accrued interest thereon, under any or all acts authorizing the issuance of such bonds, to be paid into or transferred to, as the case may be, the ''General Obligation Bond Proceeds Fund.'' Accounts shall be maintained in the ''General Obligation Bond Proceeds Fund'' of all moneys deposited in the State Treasury to the credit of that fund and the proceeds of each bond issue shall be maintained as a separate and distinct account and shall be paid out only in accordance with the law authorizing the issuance of the particular bonds from which the proceeds were derived. The Legislature may abolish, subject to the conditions of this section, any fund in the State Treasury heretofore or hereafter created by any act for the purpose of having deposited therein the proceeds from the issuance of bonds if such proceeds are transferred to or paid into the ''General Obligation Bond Proceeds Fund'' pursuant to the authority granted in this section; provided, however, that nothing in this section shall prevent the Legislature from re-establishing any bond proceeds fund so abolished and transferring back to its credit all proceeds in the ''General Obligation Bond Proceeds Fund'' which constitute the proceeds of the particular bond fund being re-established. [*New section adopted November 6, 1962.*]

SEC. 2. [*Repealed November 6, 1962. See Section 2, below.*]

[*Bond Issues—Submission by Constitutional Amendment Prohibited—Repeal of Certain Constitutional Provisions*]

SEC. 2. (a) No amendment to this Constitution which provides for the preparation, issuance and sale of bonds of the State of California shall hereafter be submitted to the electors, nor shall any such amendment to the Constitution hereafter submitted to or approved by the electors become effective for any purpose.

Each measure providing for the preparation, issuance and sale of bonds of the State of California shall hereafter be submitted to the electors in the form of a bond act or statute.

(b) The provisions of this Constitution enumerated in subdivision (c) of this section are repealed and such provisions are continued as statutes

which have been approved, adopted, legalized, ratified, validated, and made fully and completely effective, by means of the adoption by the electorate of a ratifying constitutional amendment, except that the Legislature, in addition to whatever powers it possessed under such provisions, may amend or repeal such provisions when the bonds issued thereunder have been fully retired and when no rights thereunder will be damaged.

(c) The enumerated provisions of this Constitution are: Article XVI, Sections 2, 3, 4, 4½, 5, 6, 8, 8½, 15, 16, 16.5, 17, 18, 19, 19.5, 20 and 21. [*New section adopted November 6, 1962.*]

[*Appropriations*]

SEC. 3. No money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state institution, nor shall any grant or donation of property ever be made thereto by the State, except that notwithstanding anything contained in this or any other section of the Constitution:

[*Federal Funds*]

(1) Whenever federal funds are made available for the construction of hospital facilities by public agencies and nonprofit corporations organized to construct and maintain such facilities, nothing in this Constitution shall prevent the Legislature from making state money available for that purpose, or from authorizing the use of such money for the construction of hospital facilities by nonprofit corporations organized to construct and maintain such facilities.

[*Institution for Support of Orphans or Aged Indigents*]

(2) The Legislature shall have the power to grant aid to the institutions conducted for the support and maintenance of minor orphans, or half-orphans, or abandoned children, or children of a father who is incapacitated for gainful work by permanent physical disability or is suffering from tuberculosis in such a stage that he cannot pursue a gainful occupation, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions.

[*Needy Blind*]

(3) The Legislature shall have the power to grant aid to needy blind persons not inmates of any institution supported in whole or in part by the State or by any of its political subdivisions, and no person concerned with the administration of aid to needy blind persons shall dictate how any applicant or recipient shall expend such aid granted him, and all money paid to a recipient of such aid shall be intended to help him meet his individual

needs and is not for the benefit of any other person, and such aid when granted shall not be construed as income to any person other than the blind recipient of such aid, and the State Department of Social Welfare shall take all necessary action to enforce the provisions relating to aid to needy blind persons as heretofore stated.

[*Physically Handicapped Persons*]

(4) The Legislature shall have power to grant aid to needy physically handicapped persons not inmates of any institution under the supervision of the Department of Mental Hygiene and supported in whole or in part by the State or by any institution supported in whole or part by any political subdivision of the State.

[*Management of Institutions*]

(5) The State shall have at any time the right to inquire into the management of such institutions.

[*Orphans, Aged Indigents, Needy Blind—County Support*]

(6) Whenever any county, or city and county, or city, or town, shall provide for the support of minor orphans, or half-orphans, or abandoned children, or children of a father who is incapacitated for gainful work by permanent physical disability or is suffering from tuberculosis in such a stage that he cannot pursue a gainful occupation, or aged persons in indigent circumstances, or needy blind persons not inmates of any institution supported in whole or in part by the State or by any of its political subdivisions, or needy physically handicapped persons not inmates of any institution under the supervision of the Department of Mental Hygiene and supported in whole or in part by the State or by any institution supported in whole or part by any political subdivision of the State; such county, city and county, city, or town shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church, or other control.

[*Receipts and Expenditures of Public Moneys*]

An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature. [*New section adopted November 5, 1974.*]

[*Loan Guarantees re Nonprofit Corporations and Public Agencies*]

SEC. 4. The Legislature shall have the power to insure or guarantee loans made by private or public lenders to nonprofit corporations and public agencies, the proceeds of which are to be used for the construction, expansion, enlargement, improvement, renovation or repair of any public or nonprofit hospital, hospital facility, or extended care facility, facility for the treatment of mental illness, or all of them, including any outpatient fa-

cility and any other facility useful and convenient in the operation of the hospital and any original equipment for any such hospital or facility, or both.

No provision of this Constitution, including but not limited to, Section 1 of Article XVI and Section 14 of Article XI, shall be construed as a limitation upon the authority granted to the Legislature by this section. [*New section adopted November 5, 1974.*]

SEC. 4½. [*Repealed November 6, 1962.*]

[*Religious Institutions—Grants Prohibited*]

SEC. 5. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI. [*New section adopted November 5, 1974.*]

[*Gifts or Loans of Public Moneys or Pledging of Credit Prohibited—Stock of Corporations*]

SEC. 6. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system

situated in a foreign country; provided, further, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in such corporation; and

[*Insurance Pooling Arrangements*]

Provided, further, that this section shall not prohibit any county, city and county, city, township, or other political corporation or subdivision of the State from joining with other such agencies in providing for the payment of workers' compensation, unemployment compensation, tort liability, or public liability losses incurred by such agencies, by entry into an insurance pooling arrangement under a joint exercise of powers agreement, or by membership in such publicly-owned nonprofit corporation or other public agency as may be authorized by the Legislature; and

[*Aid to Veterans*]

Provided, further, that nothing contained in this Constitution shall prohibit the use of state money or credit, in aiding veterans who served in the military or naval service of the United States during the time of war, in the acquisition of, or payments for, (1) farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, buildings, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation; and

[*Disaster Assistance*]

Provided, further, that nothing contained in this Constitution shall prohibit the State, or any county, city and county, city, township, or other political corporation or subdivision of the State from providing aid or assistance to persons, if found to be in the public interest, for the purpose of clearing debris, natural materials, and wreckage from privately owned lands and waters deposited thereon or therein during a period of a major disaster or emergency, in either case declared by the President. In such case, the public entity shall be indemnified by the recipient from the award of any claim against the public entity arising from the rendering of such aid or assistance. Such aid or assistance must be eligible for federal reimbursement for the cost thereof.

[*Temporary Transfers of Funds to Political Subdivisions*]

And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and the duty to make such temporary transfers

from the funds in custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in custody and are paid out solely through the treasurer's office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of the anticipated revenues accruing to such political subdivision, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the revenues accruing to such political subdivision before any other obligation of such political subdivision is met from such revenue. [*As amended November 2, 1982.*]

[*Controller's Warrants*]

SEC. 7. Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant. [*New section adopted November 5, 1974.*]

[*School Funding Priority*]

SEC. 8. (a) From all state revenues there shall first be set apart the moneys to be applied by the State for support of the public school system and public institutions of higher education.

(b) Commencing with the 1990–91 fiscal year, the moneys to be applied by the State for the support of school districts and community college districts shall be not less than the greater of the following amounts:

(1) The amount which, as a percentage of General Fund revenues which may be appropriated pursuant to Article XIII B, equals the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986–87.

(2) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall not be less than the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B. This paragraph shall be operative only in a fiscal year in which the percentage growth in California per capita personal income is less than or equal to the percentage growth in per capita General Fund revenues plus one half of one percent.

(3) (A) The amount required to ensure that the total allocations to school districts and community college districts from General Fund pro-

ceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall equal the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and adjusted for the change in per capita General Fund revenues.

(B) In addition, an amount equal to one-half of one percent times the prior year total allocations to school districts and community colleges from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment.

(C) This paragraph (3) shall be operative only in a fiscal year in which the percentage growth in California per capita personal income in a fiscal year is greater than the percentage growth in per capital General Fund revenues plus one half of one percent.

(c) In any fiscal year, if the amount computed pursuant to paragraph (1) of subdivision (b) exceeds the amount computed pursuant to paragraph (2) of subdivision (b) by a difference that exceeds one and one-half percent of General Fund revenues, the amount in excess of one and one-half percent of General Fund revenues shall not be considered allocations to school districts and community colleges for purposes of computing the amount of state aid pursuant to paragraph (2) or 3 of subdivision (b) in the subsequent fiscal year.

(d) In any fiscal year in which school districts and community college districts are allocated funding pursuant to paragraph (3) of subdivision (b) or pursuant to subdivision (h), they shall be entitled to a maintenance factor, equal to the difference between (1) the amount of General Fund moneys which would have been appropriated pursuant to paragraph (2) of subdivision (b) if that paragraph had been operative or the amount of General Fund moneys which would have been appropriated pursuant to subdivision (b) had subdivision (b) not been suspended, and (2) the amount of General Fund moneys actually appropriated to school districts and community college districts in that fiscal year.

(e) The maintenance factor for school districts and community college districts determined pursuant to subdivision (d) shall be adjusted annually for changes in enrollment, and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B, until it has been allocated in full. The maintenance factor shall be allocated in a manner determined by the Legislature in each fiscal year in which the percentage growth in per capita General Fund revenues exceeds the percentage growth in California per capita personal income. The maintenance factor shall be reduced each year by the amount allocated by the Legislature in that fiscal year. The minimum maintenance factor amount to be allocated in a fiscal year shall be equal to the product of General Fund rev-

enues from proceeds of taxes and one-half of the difference between the percentage growth in per capita General Fund revenues from proceeds of taxes and in California per capita personal income, not to exceed the total dollar amount of the maintenance factor.

(f) For purposes of this section, ''changes in enrollment'' shall be measured by the percentage change in average daily attendance. However, in any fiscal year, there shall be no adjustment for decreases in enrollment between the prior fiscal year and the current fiscal year unless there have been decreases in enrollment between the second prior fiscal year and the prior fiscal year and between the third prior fiscal year and the second prior fiscal year.

(h) Subparagraph (B) of paragraph (3) of subdivision (b) may be suspended for one year only when made part of or included within any bill enacted pursuant to Section 12 of Article IV. All other provisions of subdivision (b) may be suspended for one year by the enactment of an urgency statute pursuant to Section 8 of Article IV, provided that the urgency statute may not be made part of or included within any bill enacted pursuant to Section 12 of Article IV. [*As amended June 5, 1990. Operative July 1, 1990.*]

SEC. 8½. [*Repealed November 6, 1962.*]

[*Allocations to State School Fund*]

SEC. 8.5. (a) In addition to the amount required to be applied for the support of school districts and community college districts pursuant to Section 8, the Controller shall during each fiscal year transfer and allocate all revenues available pursuant to paragraph 1 of subdivision (a) of Section 2 of Article XIII B to that portion of the State School Fund restricted for elementary and high school purposes, and to that portion of the State School Fund restricted for community college purposes, respectively, in proportion to the enrollment in school districts and community college districts respectively.

(1) With respect to funds allocated to that portion of the State School Fund restricted for elementary and high school purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Superintendent of Public Instruction mutually determine that current annual expenditures per student equal or exceed the average annual expenditure per student of the 10 states with the highest annual expenditures per student for elementary and high schools, and that average class size equals or is less than the average class size of the 10 states with the lowest class size for elementary and high schools.

(2) With respect to funds allocated to that portion of the State School Fund restricted for community college purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Chancellor of the California Community Col-

leges mutually determine that current annual expenditures per student for community colleges in this State equal or exceed the average annual expenditure per student of the 10 states with the highest annual expenditure per student for community colleges.

(b) Notwithstanding the provisions of Article XIII B, funds allocated pursuant to this section shall not constitute appropriations subject to limitation.

(c) From any funds transferred to the State School Fund pursuant to subdivision (a), the Controller shall each year allocate to each school district and community college district an equal amount per enrollment in school districts from the amount in that portion of the State School Fund restricted for elementary and high school purposes and an equal amount per enrollment in community college districts from that portion of the State School Fund restricted for community college purposes.

(d) All revenues allocated pursuant to subdivision (a) shall be expended solely for the purposes of instructional improvement and accountability as required by law.

(e) Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school. [*As amended June 5, 1990. Operative July 1, 1990.*]

[*Fish and Game*]

SEC. 9. Money collected under any state law relating to the protection or propagation of fish and game shall be used for activities relating thereto. [*New section adopted November 5, 1974.*]

[*Aged Aid—Federal-State Co-operation*]

SEC. 10. Whenever the United States government or any officer or agency thereof shall provide pensions or other aid for the aged, cooperation by the State therewith and therein is hereby authorized in such manner and to such extent as may be provided by law.

The money expended by any county, city and county, municipality, district or other political subdivision of this State made available under the provisions of this section shall not be considered as a part of the base for determining the maximum expenditure for any given year permissible under Section 20† of Article XI of this Constitution independent of the vote of the electors or authorization by the State Board of Equalization. [*As amended November 6, 1962.*]

[*Relief Administration*]

SEC. 11. The Legislature has plenary power to provide for the administration of any constitutional provisions or laws heretofore or hereafter

† Section 20, Article XI, repealed June 2, 1970.

enacted concerning the administration of relief, and to that end may modify, transfer, or enlarge the powers vested in any state agency or officer concerned with the administration of relief or laws appertaining thereto. The Legislature, or the people by initiative, shall have power to amend, alter, or repeal any law relating to the relief of hardship and destitution, whether such hardship and destitution results from unemployment or from other causes, or to provide for the administration of the relief of hardship and destitution, whether resulting from unemployment or from other causes, either directly by the State or through the counties of the State, and to grant such aid to the counties therefor, or make such provision for reimbursement of the counties by the State, as the Legislature deems proper. [*As amended November 6, 1962.*]

SEC. 12. [*Repealed November 6, 1962.*]

[*Legislative Power to Release Encumbrances Taken as Security for Aid to Aged*]

SEC. 13. Notwithstanding any other provision of this Constitution, the Legislature shall have power to release, rescind, cancel, or otherwise nullify in whole or in part any encumbrance on property, personal obligation, or other form of security heretofore or hereafter exacted or imposed by the Legislature to secure the repayment to, or reimbursement of, the State, and the counties or other agencies of the state government, of aid lawfully granted to and received by aged persons. [*As amended November 6, 1962.*]

[*Bonds—Environmental Pollution Control Facilities*]

SEC. 14. The Legislature may provide for the issuance of revenue bonds to finance the acquisition, construction, and installation of environmental pollution control facilities, including the acquisition of all technological facilities necessary or convenient for pollution control, and for the lease or sale of such facilities to persons, associations, or corporations, other than municipal corporations; provided, that such revenue bonds shall not be secured by the taxing power of the State; and provided, further, that the Legislature may, by resolution adopted by either house, prohibit or limit any proposed issuance of such revenue bonds. No provision of this Constitution, including, but not limited to, Section 25 of Article XIII and Sections 1 and 2 of Article XVI, shall be construed as a limitation upon the authority granted to the Legislature pursuant to this section. Nothing herein contained shall authorize any public agency to operate any industrial or commercial enterprise. [*New section adopted November 7, 1972.*]

[*Energy Alternative Sources Facilities—Acquisition, Construction, Etc.—Revenue Bond Issuance*]

SEC. 14.5. The Legislature may provide for the issuance of revenue bonds to finance the acquisition, construction, and installation of facilities utilizing cogeneration technology, solar power, biomass, or any other al-

ternative source the Legislature may deem appropriate, including the acquisition of all technological facilities necessary or convenient for the use of alternative sources, and for the lease or sale of such facilities to persons, associations, or corporations, other than municipal corporations; provided, that such revenue bonds shall not be secured by the taxing power of the State; and provided, further, that the Legislature may, by resolution adopted by both houses, prohibit or limit any proposed issuance of such revenue bonds. No provision of this Constitution, including, but not limited to, Sections 1, 2, and 6, of this article, shall be construed as a limitation upon the authority granted to the Legislature pursuant to this section. Nothing contained herein shall authorize any public agency to operate any industrial or commercial enterprise. [*New section adopted June 3, 1980.*]

[*Parking Meter Revenues*]

SEC. 15. A public body authorized to issue securities to provide public parking facilities and any other public body whose territorial area includes such facilities are authorized to make revenues from street parking meters available as additional security. [*New section adopted November 5, 1974.*]

[*Taxation of Redevelopment Projects*]

SEC. 16. All property in a redevelopment project established under the Community Redevelopment Law as now existing or hereafter amended, except publicly owned property not subject to taxation by reason of that ownership, shall be taxed in proportion to its value as provided in Section 1 of this article, and those taxes (the word ''taxes'' as used herein includes, but is not limited to, all levies on an ad valorem basis upon land or real property) shall be levied and collected as other taxes are levied and collected by the respective taxing agencies.

The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon the taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called ''taxing agencies'') after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of those taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of that property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to, and when collected shall be paid into, the funds of the respective taxing agencies as taxes by or for those taxing agencies on all other property are paid (for the

purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which that territory has been annexed or otherwise included after the ordinance's effective date, the assessment roll of the county last equalized on the effective date of that ordinance shall be used in determining the assessed valuation of the taxable property in the project on that effective date); and

(b) Except as provided in subdivision (c), that portion of the levied taxes each year in excess of that amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in the project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, then all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(c) That portion of the taxes identified in subdivision (b) which are attributable to a tax rate levied by a taxing agency for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness for the acquisition or improvement of real property shall be allocated to, and when collected shall be paid into, the fund of that taxing agency. This paragraph shall only apply to taxes levied to repay bonded indebtedness approved by the voters of the taxing agency on or after January 1, 1989.

The Legislature may also provide that in any redevelopment plan or in the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed, or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes identified in subdivision (b), exclusive of that portion identified in subdivision (c), may be irrevocably pledged for the payment of the principal of and interest on those loans, advances, or indebtedness.

It is intended by this section to empower any redevelopment agency, city, county, or city and county under any law authorized by this section to exercise the provisions hereof separately or in combination with powers granted by the same or any other law relative to redevelopment agencies. This section shall not affect any other law or laws relating to the same or

a similar subject but is intended to authorize an alternative method of procedure governing the subject to which it refers.

The Legislature shall enact those laws as may be necessary to enforce the provisions of this section. [*As amended November 8, 1988.*]

SEC. 16.5. [*Repealed November 6, 1962.*]

[*State's Credit—Investment of Public Pension or Retirement Funds*]

SEC. 17. The State shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation, except that the State and each political subdivision, district, municipality, and public agency thereof is hereby authorized to acquire and hold shares of the capital stock of any mutual water company or corporation when the stock is so acquired or held for the purpose of furnishing a supply of water for public, municipal or governmental purposes; and the holding of the stock shall entitle the holder thereof to all of the rights, powers and privileges, and shall subject the holder to the obligations and liabilities conferred or imposed by law upon other holders of stock in the mutual water company or corporation in which the stock is so held.

Notwithstanding any other provisions of law or this Constitution to the contrary, the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system, subject to all of the following:

(a) 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) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.

(c) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then pre-

vailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(d) The members of the retirement board of a public pension or retirement system shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.

(e) The retirement board of a public pension or retirement system, consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.

(f) With regard to the retirement board of a public pension or retirement system which includes in its composition elected employee members, the number, terms, and method of selection or removal of members of the retirement board which were required by law or otherwise in effect on July 1, 1991, shall not be changed, amended, or modified by the Legislature unless the change, amendment, or modification enacted by the Legislature is ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.

(g) The Legislature may by statute continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board pursuant to this section.

(h) As used in this section, the term ''retirement board'' shall mean the board of administration, board of trustees, board of directors, or other governing body or board of a public employees' pension or retirement system; provided, however, that the term ''retirement board'' shall not be interpreted to mean or include a governing body or board created after July 1, 1991 which does not administer pension or retirement benefits, or the elected legislative body of a jurisdiction which employs participants in a public employees' pension or retirement system. [*As amended November 3, 1992. Initiative measure.*]

[*Municipal Debt Exceeding Income*]

SEC. 18. (a) No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose, except that with respect to any such public entity which is authorized to incur indebtedness for public school purposes, any proposition for the incurrence of indebtedness in the form of general obligation bonds for the purpose of repairing, reconstructing or replacing public school buildings determined, in the

manner prescribed by law, to be structurally unsafe for school use, shall be adopted upon the approval of a majority of the voters of the public entity voting on the proposition at such election; nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and provide for a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the indebtedness.

(b) Notwithstanding subdivision (a), on or after the effective date of the measure adding this subdivision, in the case of any school district, community college district, or county office of education, any proposition for the incurrence of indebtedness in the form of general obligation bonds for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, shall be adopted upon the approval of 55 percent of the voters of the district or county, as appropriate, voting on the proposition at an election. This subdivision shall apply only to a proposition for the incurrence of indebtedness in the form of general obligation bonds for the purposes specified in this subdivision if the proposition meets all of the accountability requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A.

(c) When two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when two-thirds or a majority or 55 percent of the voters, as the case may be, voting on any one of those propositions, vote in favor thereof, the proposition shall be deemed adopted. [*As amended November 7, 2000. Initiative measure.*]

[*Public Improvement Proceedings by Chartered City or County*]

SEC. 19. All proceedings undertaken by any chartered city, or by any chartered county or by any chartered city and county for the construction of any public improvement, or the acquisition of any property for public use, or both, where the cost thereof is to be paid in whole or in part by special assessment or other special assessment taxes upon property, whether the special assessment will be specific or a special assessment tax upon property wholly or partially according to the assessed value of such property, shall be undertaken only in accordance with the provisions of law governing: (a) limitations of costs of such proceedings or assessments for such proceedings, or both, in relation to the value of any property assessed therefor; (b) determination of a basis for the valuation of any such property; (c) payment of the cost in excess of such limitations; (d) avoidance of such limitations; (e) postponement or abandonment, or both, of such proceedings in whole or in part upon majority protest, and particularly in accordance with such provisions as contained in Sections 10, 11 and 13a

of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 or any amendments, codification, reenactment or restatement thereof.

Notwithstanding any provisions for debt limitation or majority protest as in this section provided, if, after the giving of such reasonable notice by publication and posting and the holding of such public hearing as the legislative body of any such chartered county, chartered city or chartered city and county shall have prescribed, such legislative body by no less than a four-fifths vote of all members thereof, finds and determines that the public convenience and necessity require such improvements or acquisitions, such debt limitation and majority protest provisions shall not apply.

Nothing contained in this section shall require the legislative body of any such city, county, or city and county to prepare or to cause to be prepared, hear, notice for hearing or report the hearing of any report as to any such proposed construction or acquisition or both. [*New section adopted November 5, 1974.*]

SEC. 19.5. [*Repealed November 6, 1962.*]

[*Budget Stabilization Account*]

SEC. 20. (a) The Budget Stabilization Account is hereby created in the General Fund.

(b) In each fiscal year as specified in paragraphs (1) to (3), inclusive, the Controller shall transfer from the General Fund to the Budget Stabilization Account the following amounts:

(1) No later than September 30, 2006, a sum equal to 1 percent of the estimated amount of General Fund revenues for the 2006–07 fiscal year.

(2) No later than September 30, 2007, a sum equal to 2 percent of the estimated amount of General Fund revenues for the 2007–08 fiscal year.

(3) No later than September 30, 2008, and annually thereafter, a sum equal to 3 percent of the estimated amount of General Fund revenues for the current fiscal year.

(c) The transfer of moneys shall not be required by subdivision (b) in any fiscal year to the extent that the resulting balance in the account would exceed 5 percent of the General Fund revenues estimate set forth in the budget bill for that fiscal year, as enacted, or eight billion dollars ($8,000,000,000), whichever is greater. The Legislature may, by statute, direct the Controller, for one or more fiscal years, to transfer into the account amounts in excess of the levels prescribed by this subdivision.

(d) Subject to any restriction imposed by this section, funds transferred to the Budget Stabilization Account shall be deemed to be General Fund revenues for all purposes of this Constitution.

(e) The transfer of moneys from the General Fund to the Budget Stabilization Account may be suspended or reduced for a fiscal year as specified by an executive order issued by the Governor no later than June 1 of the preceding fiscal year.

(f) (1) Of the moneys transferred to the account in each fiscal year, 50 percent, up to the aggregate amount of five billion dollars ($5,000,000,000) for all fiscal years, shall be deposited in the Deficit Recovery Bond Retirement Sinking Fund Subaccount, which is hereby created in the account for the purpose of retiring deficit recovery bonds authorized and issued as described in Section 1.3, in addition to any other payments provided for by law for the purpose of retiring those bonds. The moneys in the sinking fund subaccount are continuously appropriated to the Treasurer to be expended for that purpose in the amounts, at the times, and in the manner deemed appropriate by the Treasurer. Any finds remaining in the sinking fund subaccount after all of the deficit recovery bonds are retired shall be transferred to the account, and may be transferred to the General Fund pursuant to paragraph (2).

(2) All other funds transferred to the account in a fiscal year shall not be deposited in the sinking fund subaccount and may, by statute, be transferred to the General Fund. [*New section adopted March 2, 2004.*]

SEC. 21. [*Repealed November 6, 1962.*]

ARTICLE XVII. [*Repealed June 8, 1976.*]

ARTICLE XVIII. [*Repealed November 3, 1970. See Article XVIII, below.*]

ARTICLE XVIII*

AMENDING AND REVISING THE CONSTITUTION

SECTION 1. [*Repealed November 3, 1970. See Section 1, below.*]

[*By Legislature*]

SECTION 1. The Legislature by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, may propose an amendment or revision of the Constitution and in the same manner may amend or withdraw its proposal. Each amendment shall be so prepared and submitted that it can be voted on separately. [*New section adopted November 3, 1970.*]

* New Article XVIII adopted November 3, 1970.

SEC. 2. [*Repealed November 3, 1970. See Section 2, below.*]

[*Constitutional Convention*]

SEC. 2. The Legislature by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, may submit at a general election the question whether to call a convention to revise the Constitution. If the majority vote yes on that question, within 6 months the Legislature shall provide for the convention. Delegates to a constitutional convention shall be voters elected from districts as nearly equal in population as may be practicable. [*New section adopted November 3, 1970.*]

[*Initiatives*]

SEC. 3. The electors may amend the Constitution by initiative. [*New section adopted November 3, 1970.*]

[*Effective Date—Conflict*]

SEC. 4. A proposed amendment or revision shall be submitted to the electors and if approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail. [*New section adopted November 3, 1970.*]

ARTICLE XIX*

MOTOR VEHICLE REVENUES

SECTION 1. [*Repealed June 4, 1974. See Section 1, below.*]

[*Use of Fuel Taxes*]

SECTION 1. Revenues from taxes imposed by the State on motor vehicle fuels for use in motor vehicles upon public streets and highways, over and above the costs of collection and any refunds authorized by law, shall be used for the following purposes:

(a) The research, planning, construction, improvement, maintenance, and operation of public streets and highways (and their related public facilities for nonmotorized traffic), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the adminstrative costs necessarily incurred in the foregoing purposes.

(b) The research, planning, construction, and improvement of exclusive public mass transit guideways (and their related fixed facilities), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, the administrative costs

* Former Article XXVI, as renumbered June 8, 1976.

necessarily incurred in the foregoing purposes, and the maintenance of the structures and the immediate right-of-way for the public mass transit guideways, but excluding the maintenance and operating costs for mass transit power systems and mass transit passenger facilities, vehicles, equipment, and services. [*New section adopted June 4, 1974.*]

SEC. 2. [*Repealed June 4, 1974. See Section 2, below.*]

[*Use of Motor Vehicle Fees and Taxes*]

SEC. 2. Revenues from fees and taxes imposed by the State upon vehicles or their use or operation, over and above the costs of collection and any refunds authorized by law, shall be used for the following purposes:

(a) The state administration and enforcement of laws regulating the use, operation, or registration of vehicles used upon the public streets and highways of this State, including the enforcement of traffic and vehicle laws by state agencies and the mitigation of the environmental effects of motor vehicle operation due to air and sound emissions.

(b) The purposes specified in Section 1 of this article. [*New section adopted June 4, 1974.*]

SEC. 3. [*Repealed June 4, 1974. See Section 3, below.*]

[*Appropriations by the Legislature—Regulation of Expenditures, Etc.*]

SEC. 3. The Legislature shall provide for the allocation of the revenues to be used for the purposes specified in Section 1 of this article in a manner which ensures the continuance of existing statutory allocation formulas for cities, counties, and areas of the State, until it determines that another basis for an equitable, geographical, and jurisdictional distribution exists; provided that, until such determination is made, any use of such revenues for purposes specified in subdivision (b) of Section 1 of this article by or in a city, county, or area of the State shall be included within the existing statutory allocations to, or for expenditure in, that city, county, or area. Any future statutory revisions shall provide for the allocation of these revenues, together with other similar revenues, in a manner which gives equal consideration to the transportation needs of all areas of the State and all segments of the population consistent with the orderly achievement of the adopted local, regional, and statewide goals for ground transportation in local general plans, regional transportation plans, and the California Transportation Plan. [*New section adopted June 4, 1974.*]

SEC. 4. [*Repealed June 4, 1974. See Section 4, below.*]

[*Authorization and Approval for Expenditures*]

SEC. 4. Revenues allocated pursuant to Section 3 may not be expended for the purposes specified in subdivision (b) of Section 1, except for research and planning, until such use is approved by a majority of the votes cast on the proposition authorizing such use of such revenues in an

election held throughout the county or counties, or a specified area of a county or counties, within which the revenues are to be expended. The Legislature may authorize the revenues approved for allocation or expenditure under this section to be pledged or used for the payment of principal and interest on voter-approved bonds issued for the purposes specified in subdivision (b) of Section 1. [*New section adopted June 4, 1974.*]

[*Expenditures for Payment of Bonds*]

SEC. 5. The Legislature may authorize up to 25 percent of the revenues available for expenditure by any city or county, or by the State, for the purposes specified in subdivision (a) of Section 1 of this article to be pledged or used for the payment of principal and interest on voter-approved bonds issued for such purposes. [*New section adopted June 4, 1974.*]

SEC. 6. [*Repealed November 3, 1998. See Section 6, below.*]

[*Loans to State General Fund*]

SEC. 6. The tax revenues designated under this article may be loaned to the General Fund only if one of the following conditions is imposed:

(a) That any amount loaned is to be repaid in full to the fund from which it was borrowed during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.

(b) That any amount loaned is to be repaid in full to the fund from which it was borrowed within three fiscal years from the date on which the loan was made and one of the following has occurred:

(1) The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.

(2) The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, adjusted for the change in the cost of living and the change in population, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year.

(c) Nothing in this section prohibits the Legislature from authorizing, by statute, loans to local transportation agencies, cities, counties, or cities and counties, from funds that are subject to this article, for the purposes authorized under this article. Any loan authorized as described by this subdivision shall be repaid, with interest at the rate paid on money in the Pooled Money Investment Account, or any successor to that account, during the period of time that the money is loaned, to the fund from which it

was borrowed, not later than four years after the date on which the loan was made. [*New section adopted November 3, 1998.*]

[*Scope of Article*]

SEC. 7. This article shall not affect or apply to fees or taxes imposed pursuant to the Sales and Use Tax Law or the Vehicle License Fee Law, and all amendments and additions now or hereafter made to such statutes. [*New section adopted June 4, 1974.*]

[*Use of Excess Lands for Parks and Recreation*]

SEC. 8. Notwithstanding Sections 1 and 2 of this article, any real property acquired by the expenditure of the designated tax revenues by an entity other than the State for the purposes authorized in those sections, but no longer required for such purposes, may be used for local public park and recreational purposes. [*New section adopted June 8, 1976.*]

[*Transfer of Surplus State Property Located in Coastal Zone*]

SEC. 9. Notwithstanding any other provision of this Constitution, the Legislature, by statute, with respect to surplus state property acquired by the expenditure of tax revenues designated in Sections 1 and 2 and located in the coastal zone, may authorize the transfer of such property, for a consideration at least equal to the acquisition cost paid by the state to acquire the property, to the Department of Parks and Recreation for state park purposes, or to the Department of Fish and Game for the protection and preservation of fish and wildlife habitat, or to the Wildlife Conservation Board for purposes of the Wildlife Conservation Law of 1947, or to the State Coastal Conservancy for the preservation of agricultural lands.

As used in this section, ''coastal zone'' means ''coastal zone'' as defined by Section 30103 of the Public Resources Code as such zone is described on January 1, 1977. [*New section adopted November 7, 1978.*]

ARTICLE XIX A*

LOANS FROM THE PUBLIC TRANSPORTATION ACCOUNT OR LOCAL TRANSPORTATION FUNDS

[*Loans to State General Fund*]

SECTION 1. The funds in the Public Transportation Account in the State Transportation Fund, or any successor to that account, may be loaned to the General Fund only if one of the following conditions is imposed:

(a) That any amount loaned is to be repaid in full to the account during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.

* New Article XIX A adopted November 3, 1998.

(b) That any amount loaned is to be repaid in full to the account within three fiscal years from the date on which the loan was made and one of the following has occurred:

(1) The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.

(2) The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year. [*New section adopted November 3, 1998.*]

[*''Local Transportation Fund''*]

SEC. 2. (a) As used in this section, a ''local transportation fund'' is a fund created under Section 29530 of the Government Code, or any successor to that statute.

(b) All local transportation funds are hereby designated trust funds.

(c) A local transportation fund that has been created pursuant to law may not be abolished.

(d) Money in a local transportation fund shall be allocated only for the purposes authorized under Article 11 (commencing with Section 29530) of Chapter 2 of Division 3 of Title 3 of the Government Code and Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code, as those provisions existed on October 1, 1997. Neither the county nor the Legislature may authorize the expenditure of money in a local transportation fund for purposes other than those specified in this subdivision. [*New section adopted November 3, 1998.*]

ARTICLE XIX B*

MOTOR VEHICLE FUEL SALES TAX REVENUES AND TRANSPORTATION IMPROVEMENT FUNDING

[*Transfer and Allocation of Funds*]

SECTION 1. (a) For the 2003–04 fiscal year and each fiscal year thereafter, all moneys that are collected during the fiscal year from taxes under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), or any successor to that law, upon the sale, storage, use, or other consumption in this State of motor vehicle fuel, and that are deposited in the General Fund of the State pursuant to that law, shall be transferred to the Transportation Investment Fund, which is hereby created in the State Treasury.

* New Article XIX B adopted November 5, 2002.

(b) (1) For the 2003–04 to 2007–08 fiscal years, inclusive, moneys in the Transportation Investment Fund shall be allocated, upon appropriation by the Legislature, in accordance with Section 7104 of the Revenue and Taxation Code as that section read on the operative date of this article.

(2) For the 2008–09 fiscal year and each fiscal year thereafter, moneys in the Transportation Investment Fund shall be allocated solely for the following purposes:

(A) Public transit and mass transportation.

(B) Transportation capital improvement projects, subject to the laws governing the State Transportation Improvement Program, or any successor to that program.

(C) Street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by cities, including a city and county.

(D) Street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by counties, including a city and county.

(c) For the 2008–09 fiscal year and each fiscal year thereafter, moneys in the Transportation Investment Fund shall be allocated, upon appropriation by the Legislature, as follows:

(A) Twenty percent of the moneys for the purposes set forth in subparagraph (A) of paragraph (2) of subdivision (b).

(B) Forty percent of the moneys for the purposes set forth in subparagraph (B) of paragraph (2) of subdivision (b).

(C) Twenty percent of the moneys for the purposes set forth in subparagraph (C) of paragraph (2) of subdivision (b).

(D) Twenty percent of the moneys for the purpose set forth in subparagraph (D) of paragraph (2) of subdivision (b).

(d) The transfer of revenues from the General Fund of the State to the Transportation Investment Fund pursuant to subdivision (a) may be suspended, in whole or in part, for a fiscal year if both of the following conditions are met:

(1) The Governor has issued a proclamation that declares that the transfer of revenues pursuant to subdivision (a) will result in a significant negative fiscal impact on the range of functions of government funded by the General Fund of the State.

(2) The Legislature enacts by statute, pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, a suspension for that fiscal year of the transfer of revenues pursuant to subdivision (a), provided that the bill does not contain any other unrelated provision.

(e) The Legislature may enact a statute that modifies the percentage shares set forth in subdivision (c) by a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, provided that the bill does not contain any other unrelated

provision and that the moneys described in subdivision (a) are expended solely for the purposes set forth in paragraph (2) of subdivison (b). [*New section adopted November 5, 2002.*]

ARTICLE XX

MISCELLANEOUS SUBJECTS

[*Sacramento County Consolidation With City or Cities*]

SECTION 1. Notwithstanding the provisions of Section 6 of Article XI, the County of Sacramento and all or any of the cities within the County of Sacramento may be consolidated as a charter city and county as provided by statute, with the approval of a majority of the electors of the county voting on the question of such consolidation and upon such other vote as the Legislature may prescribe in such statute. The charter City and County of Sacramento shall be a charter city and a charter county. Its charter city powers supersede conflicting charter county powers. [*New section adopted June 4, 1974.*]

[*Protection of Homesteads*]

SEC. 1.5. The Legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families. [*New section adopted June 8, 1976.*]

[*Leland Stanford Junior University—Henry E. Huntington Library and Art Gallery*]

SEC. 2. Except for tax exemptions provided in Article XIII, the rights, powers, privileges, and confirmations conferred by Sections 10† and 15† of Article IX in effect on January 1, 1973, relating to Stanford University and the Huntington Library and Art Gallery, are continued in effect. [*Former Section 6, as renumbered June 8, 1976.*]

[*Oath of Office*]

SEC. 3. Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, except such inferior officers and employees as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation

† Sections 10 and 15 of Article IX repealed November 5, 1974.

freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

''And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means except as follows:

_____

(If no affiliations, write in the words ''No Exceptions'')

and that during such time as I hold the office of_____

(name of office)

I will not advocate nor become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means.''

And no other oath, declaration, or test, shall be required as a qualification for any public office or employment.

''Public officer and employee'' includes every officer and employee of the State, including the University of California, every county, city, city and county, district, and authority, including any department, division, bureau, board, commission, agency, or instrumentality of any of the foregoing. [*As amended November 4, 1952.*]

SEC. 3.5. [*Repealed November 3, 1970.*]

[*Franchises*]

SEC. 4. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee, or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges. [*Former Section 7, as renumbered June 8, 1976.*]

SEC. 5. [*Repealed June 8, 1976. See Section 5, below.*]

[*Laws Concerning Corporations*]

SEC. 5. All laws now in force in this State concerning corporations and all laws that may be hereafter passed pursuant to this section may be altered from time to time or repealed. [*Former Section 24, as renumbered June 8, 1976.*]

SEC. 6. [*Renumbered Section 2 June 8, 1976. See Section 6, below.*]

[*Reduction in Legislator's Term of Office—Retirement Benefits, Etc.*]

SEC. 6. Any legislator whose term of office is reduced by operation of the amendment to subdivision (a) of Section 2 of Article IV adopted by the people in 1972 shall, notwithstanding any other provision of this Constitution, be entitled to retirement benefits and compensation as if the term of office had not been so reduced. [*Former Section 25, as renumbered June 8, 1976.*]

[*Constitutional Officers—Number of Terms*]

SEC. 7. The limitations on the number of terms prescribed by Section 2 of Article IV, Sections 2 and 11 of Article V, Section 2 of Article IX, and Section 17 of Article XIII apply only to terms to which persons are elected or appointed on or after November 6, 1990, except that an incumbent Senator whose office is not on the ballot for the general election on that date may serve only one additional term. Those limitations shall not apply to any unexpired term to which a person is elected or appointed if the remainder of the term is less than half of the full term. [*New section adopted November 6, 1990. Initiative measure.*]

SEC. 8. [*Renumbered Section 21 of Article I and amended November 5, 1974.*]

SEC. 9. [*Repealed November 3, 1970.*]

SEC. 10. [*Repealed June 8, 1976.*]

SEC. 11. [*Repealed June 8, 1976.*]

SEC. 12. [*Repealed November 3, 1970.*]

SEC. 13. [*Repealed November 3, 1970.*]

SEC. 14. [*Repealed November 3, 1970.*]

SEC. 15. [*Repealed June 8, 1976.*]

SEC. 16. [*Repealed November 7, 1972.*]

SEC. 17. [*Repealed June 8, 1976.*]

SEC. 17½. [*Repealed June 8, 1976.*]

SEC. 18. [*Renumbered Section 8 of Article I and amended November 5, 1974.*]

SEC. 19. [*Repealed June 8, 1976.*]

SEC. 20. [*Repealed June 8, 1976.*]

SEC. 21. [*Repealed June 8, 1976.*]

[*Liquor Control*]

SEC. 22. The State of California, subject to the internal revenue laws of the United States, shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transporta-

tion of alcoholic beverages within the State, and subject to the laws of the United States regulating commerce between foreign nations and among the states shall have the exclusive right and power to regulate the importation into and exportation from the State, of alcoholic beverages. In the exercise of these rights and powers, the Legislature shall not constitute the State or any agency thereof a manufacturer or seller of alcoholic beverages.

[*Licensed Premises—Types of Licenses*]

All alcoholic beverages may be bought, sold, served, consumed and otherwise disposed of in premises which shall be licensed as provided by the Legislature. In providing for the licensing of premises, the Legislature may provide for the issuance of, among other licenses, licenses for the following types of premises where the alcoholic beverages specified in the licenses may be sold and served for consumption upon the premises:

(a) For bona fide public eating places, as defined by the Legislature.

(b) For public premises in which food shall not be sold or served as in a bona fide public eating place, but upon which premises the Legislature may permit the sale or service of food products incidental to the sale and service of alcoholic beverages. No person under the age of 21 years shall be permitted to enter and remain in any such premises without lawful business therein.

(c) For public premises for the sale and service of beers alone.

(d) Under such conditions as the Legislature may impose, for railroad dining or club cars, passenger ships, common carriers by air, and bona fide clubs after such clubs have been lawfully operated for not less than one year.

[*Service or Sale to Minors*]

The sale, furnishing, giving, or causing to be sold, furnished, or giving away of any alcoholic beverage to any person under the age of 21 years is hereby prohibited, and no person shall sell, furnish, give, or cause to be sold, furnished, or given away any alcoholic beverage to any person under the age of 21 years, and no person under the age of 21 years shall purchase any alcoholic beverage.

[*Director of Alcoholic Beverage Control*]

The Director of Alcoholic Beverage Control shall be the head of the Department of Alcoholic Beverage Control, shall be appointed by the Governor subject to confirmation by a majority vote of all of the members elected to the Senate, and shall serve at the pleasure of the Governor. The director may be removed from office by the Governor, and the Legislature

shall have the power, by a majority vote of all members elected to each house, to remove the director from office for dereliction of duty or corruption or incompetency. The director may appoint three persons who shall be exempt from civil service, in addition to the person he is authorized to appoint by Section 4 of Article XXIV.

[*Department of Alcoholic Beverage Control—Powers—Duties*]

The Department of Alcoholic Beverage Control shall have the exclusive power, except as herein provided and in accordance with laws enacted by the Legislature, to license the manufacture, importation and sale of alcoholic beverages in this State, and to collect license fees or occupation taxes on account thereof. The department shall have the power, in its discretion, to deny, suspend or revoke any specific alcoholic beverages license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals, or that a person seeking or holding a license has violated any law prohibiting conduct involving moral turpitude. It shall be unlawful for any person other than a licensee of said department to manufacture, import or sell alcoholic beverages in this State.

[*Alcoholic Beverage Control Appeals Board*]

The Alcoholic Beverage Control Appeals Board shall consist of three members appointed by the Governor, subject to confirmation by a majority vote of all of the members elected to the Senate. Each member, at the time of his initial appointment, shall be a resident of a different county from the one in which either of the other members resides. The members of the board may be removed from office by the Governor, and the Legislature shall have the power, by a majority vote of all members elected to each house, to remove any member from office for dereliction of duty or corruption or incompetency.

[*Appeals—Reviews—Reversals*]

When any person aggrieved thereby appeals from a decision of the department ordering any penalty assessment, issuing, denying, transferring, suspending or revoking any license for the manufacture, importation, or sale of alcoholic beverages, the board shall review the decision subject to such limitations as may be imposed by the Legislature. In such cases, the board shall not receive evidence in addition to that considered by the department. Review by the board of a decision of the department shall be limited to the questions whether the department has proceeded without or in excess of its jurisdiction, whether the department has proceeded in the manner required by law, whether the decision is supported by the findings,

and whether the findings are supported by substantial evidence in the light of the whole record. In appeals where the board finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department it may enter an order remanding the matter to the department for reconsideration in the light of such evidence. In all other appeals the board shall enter an order either affirming or reversing the decision of the department. When the order reverses the decision of the department, the board may direct the reconsideration of the matter in the light of its order and may direct the department to take such further action as is specially enjoined upon it by law, but the order shall not limit or control in any way the discretion vested by law in the department. Orders of the board shall be subject to judicial review upon petition of the director or any party aggrieved by such order.

[*Removal of Director or Board Members*]

A concurrent resolution for the removal of either the director or any member of the board may be introduced in the Legislature only if five Members of the Senate, or 10 Members of the Assembly, join as authors.

[*Licenses—Regulation—Fees*]

Until the Legislature shall otherwise provide, the privilege of keeping, buying, selling, serving, and otherwise disposing of alcoholic beverages in bona fide hotels, restaurants, cafes, cafeterias, railroad dining or club cars, passenger ships, and other public eating places, and in bona fide clubs after such clubs have been lawfully operated for not less than one year, and the privilege of keeping, buying, selling, serving, and otherwise disposing of beers on any premises open to the general public shall be licensed and regulated under the applicable provisions of the Alcoholic Beverage Control Act, insofar as the same are not inconsistent with the provisions hereof, and excepting that the license fee to be charged bona fide hotels, restaurants, cafes, cafeterias, railroad dining or club cars, passenger ships, and other public eating places, and any bona fide clubs after such clubs have been lawfully operated for not less than one year, for the privilege of keeping, buying, selling, or otherwise disposing of alcoholic beverages, shall be the amounts prescribed as of the operative date hereof, subject to the power of the Legislature to change such fees.

The State Board of Equalization shall assess and collect such excise taxes as are or may be imposed by the Legislature on account of the manufacture, importation and sale of alcoholic beverages in this State.

The Legislature may authorize, subject to reasonable restrictions, the sale in retail stores of alcoholic beverages contained in the original packages, where such alcoholic beverages are not to be consumed on the premises where sold; and may provide for the issuance of all types of licenses

necessary to carry on the activities referred to in the first paragraph of this section, including, but not limited to, licenses necessary for the manufacture, production, processing, importation, exportation, transportation, wholesaling, distribution, and sale of any and all kinds of alcoholic beverages.

The Legislature shall provide for apportioning the amounts collected for license fees or occupation taxes under the provisions hereof between the State and the cities, counties and cities and counties of the State, in such manner as the Legislature may deem proper.

All constitutional provisions and laws inconsistent with the provisions hereof are hereby repealed.

The provisions of this section shall be self-executing, but nothing herein shall prohibit the Legislature from enacting laws implementing and not inconsistent with such provisions.

This amendment shall become operative on January 1, 1957. [*As amended November 6, 1956. Operative January 1, 1957.*]

[*State Colleges—Speaker, Member of Governing Body*]

SEC. 23. Notwithstanding any other provision of this Constitution, the Speaker of the Assembly shall be an ex officio member, having equal rights and duties with the nonlegislative members, of any state agency created by the Legislature in the field of public higher education which is charged with the management, administration, and control of the State College System of California. [*New section adopted November 3, 1970.*]

SEC. 24. [*Renumbered Section 5 June 8, 1976.*]

SEC. 25. [*Renumbered Section 6 June 8, 1976.*]

ARTICLE XXI*

REAPPORTIONMENT OF SENATE, ASSEMBLY, CONGRESSIONAL, AND BOARD OF EQUALIZATION DISTRICTS

[*Reapportionment Following National Census*]

SECTION 1. In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts in conformance with the following standards:

[*Standards*]

(a) Each member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single-member district.

* New Article XXI adopted June 3, 1980.

(b) The population of all districts of a particular type shall be reasonably equal.

(c) Every district shall be contiguous.

(d) Districts of each type shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary.

(e) The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section. [*New section adopted June 3, 1980.*]

ARTICLE XXII**

ARCHITECTURAL AND ENGINEERING SERVICES

[*Authority of Government to Contract for Architectural and Engineering Services*]

SECTION 1. The State of California and all other governmental entities, including, but not limited to, cities, counties, cities and counties, school districts and other special districts, local and regional agencies and joint power agencies, shall be allowed to contract with qualified private entities for architectural and engineering services for all public works of improvement. The choice and authority to contract shall extend to all phases of project development including permitting and environmental studies, rights-of-way services, design phase services and construction phase services. The choice and authority shall exist without regard to funding sources whether federal, state, regional, local or private, whether or not the project is programmed by a state, regional or local governmental entity, and whether or not the completed project is a part of any state owned or state operated system or facility. [*New section adopted November 7, 2000. Initiative measure.*]

[Construction of Article VII]

SEC. 2. Nothing contained in Article VII of this Constitution shall be construed to limit, restrict or prohibit the State or any other governmental entities, including, but not limited to, cities, counties, cities and counties, school districts and other special districts, local with regional agencies and joint power agencies, from contracting and private entities for the performance of architectural and engineering services. [*New section adopted November 7, 2000. Initiative measure.*]

** New Article XXII adopted November 7, 2000. Initiative measure.

ARTICLE XXIII. [*Repealed June 8, 1976.*]

ARTICLE XXIV. [*Repealed June 8, 1976.*]

ARTICLE XXV. [*Repealed November 8, 1949. Initiative measure.*]

ARTICLE XXVI. [*Renumbered Article XIX June 8, 1976.*]

ARTICLE XXVII. [*Repealed November 3, 1970.*]

ARTICLE XXVIII. [*Repealed November 5, 1974.*]

ARTICLE XXXIV*

PUBLIC HOUSING PROJECT LAW

[*Approval of Low Rent Housing Projects by Electors*]

SECTION 1. No low rent housing project shall hereafter be developed, constructed, or acquired in any manner by any state public body until, a majority of the qualified electors of the city, town or county, as the case may be, in which it is proposed to develop, construct, or acquire the same, voting upon such issue, approve such project by voting in favor thereof at an election to be held for that purpose, or at any general or special election.

[*''Low Rent Housing Project''*]

For the purposes of this article the term ''low rent housing project'' shall mean any development composed of urban or rural dwellings, apartments or other living accommodations for persons of low income, financed in whole or in part by the Federal Government or a state public body or to which the Federal Government or a state public body extends assistance by supplying all or part of the labor, by guaranteeing the payment of liens, or otherwise. For the purposes of this Article only there shall be excluded from the term ''low rent housing project'' any such project where there shall be in existence on the effective date hereof, a contract for financial assistance between any state public body and the Federal Government in respect to such project.

[*''Persons of Low Income''*]

For the purposes of this Article only ''persons of low income'' shall mean persons or families who lack the amount of income which is necessary (as determined by the state public body developing, constructing, or

* New article adopted November 7, 1950. Initiative measure.

acquiring the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

[*"State Public Body"*]

For the purposes of this Article the term "state public body" shall mean this State, or any city, city and county, county, district, authority, agency, or any other subdivision or public body of this State.

[*"Federal Government"*]

For the purposes of this Article the term "Federal Government" shall mean the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America. [*New section adopted November 7, 1950. Initiative measure.*]

[*Self-executing Provisions*]

SEC. 2. The provisions of this Article shall be self-executing but legislation not in conflict herewith may be enacted to facilitate its operation. [*New section adopted November 7, 1950. Initiative measure.*]

[*Constitutionality of Article*]

SEC. 3. If any portion, section or clause of this Article, or the application thereof to any person or circumstance, shall for any reason be declared unconstitutional or held invalid, the remainder of this Article, or the application of such portion, section or clause to other persons or circumstances, shall not be affected thereby. [*New section adopted November 7, 1950. Initiative measure.*]

[*Scope of Article*]

SEC. 4. The provisions of this Article shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith. [*New section adopted November 7, 1950. Initiative measure.*]

ARTICLE XXXV*

MEDICAL RESEARCH

[*California Institute for Regenerative Medicine*]

SECTION 1. There is hereby established the California Institute for Regenerative Medicine. [*New section adopted November 2, 2004. Initiative measure.*]

* New Article XXXV adopted November 2, 2004. Initiative measure.

[*California Institute for Regenerative Medicine—Purposes*]

SEC. 2. The institute shall have the following purposes:

(a) To make grants and loans for stem cell research, for research facilities, and for other vital research opportunities to realize therapies, protocols, and/or medical procedures that will result in, as speedily as possible, the cure for, and/or substantial mitigation of, major diseases, injuries, and orphan diseases.

(b) To support all stages of the process of developing cures, from laboratory research through successful clinical trials.

(c) To establish the appropriate regulatory standards and oversight bodies for research and facilities development. [*New section adopted November 2, 2004. Initiative measure.*]

[*California Institute for Regenerative Medicine—Use of Funds for Cloning Research*]

SEC. 3. No funds authorized for, or made available to, the institute shall be used for research involving human reproductive cloning. [*New section adopted November 2, 2004. Initiative measure.*]

[*California Institute for Regenerative Medicine—Funds*]

SEC. 4. Funds authorized for, or made available to, the institute shall be continuously appropriated without regard to fiscal year, be available and used only for the purposes provided in this article, and shall not be subject to appropriation or transfer by the Legislature or the Governor for any other purpose. [*New section adopted November 2, 2004. Initiative measure.*]

[*Right to Conduct Stem Cell Research*]

SEC. 5. There is hereby established a right to conduct stem cell research which includes research involving adult stem cells, cord blood stem cells, pluripotent stem cells, and/or progenitor cells. Pluripotent stem cells are cells that are capable of self-renewal, and have broad potential to differentiate into multiple adult cell types. Pluripotent stem cells may be derived from somatic cell nuclear transfer or from surplus products of in vitro fertilization treatments when such products are donated under appropriate informed consent procedures. Progenitor cells are multipotent or precursor cells that are partially differentiated, but retain the ability to divide and give rise to differentiated cells. [*New section adopted November 2, 2004. Initiative measure.*]

[*California Institute for Regenerative Medicine—Utilization of Bonds*]

SEC. 6. Notwithstanding any other provision of this Constitution or any law, the institute, which is established in state government, may utilize state issued tax-exempt and taxable bonds to fund its operations, medical

and scientific research, including therapy development through clinical trials, and facilities. [*New section adopted November 2, 2004. Initiative measure.*]

[*California Institute for Regenerative Medicine—Civil Service Exemption*]

SEC. 7. Notwithstanding any other provision of this Constitution, including Article VII, or any law, the institute and its employees are exempt from civil service. [*New section adopted November 2, 2004. Initiative measure.*]

Index
Constitution of California

INDEX TO CALIFORNIA CONSTITUTION

A

C

D

F

H

K

L

M

N

O

U

V

W

MEASURES SUBMITTED TO VOTE OF ELECTORS

Primary Election, March 2, 2004
General Election, November 2, 2004

MEASURES SUBMITTED TO VOTE OF ELECTORS
Primary Election, March 2, 2004

MEASURES ADOPTED

CONSTITUTIONAL AMENDMENTS SUBMITTED BY LEGISLATURE

Number on ballot

58. **The California Balanced Budget Act.** (2003–04 Fifth Extraordinary Session, Resolution Chapter 1, ACA 5)

BOND ACTS SUBMITTED BY LEGISLATURE

55. **Kindergarten-University Public Education Facilities Bond Act of 2004.** (Statutes 2002, Chapter 33, AB 16)

57. **The Economic Recovery Bond Act.** (2003–04 Fifth Extraordinary Session, Chapter 2, AB 9)

MEASURES DEFEATED

INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE

Number on ballot

56. **State Budget, Related Taxes, and Reserve. Voting Requirements. Penalties.**

MEASURES SUBMITTED TO VOTE OF ELECTORS

General Election, November 2, 2004

MEASURES ADOPTED

CONSTITUTIONAL AMENDMENTS SUBMITTED BY LEGISLATURE

Number on ballot

1A. **Protection of Local Government Revenues.** (Statutes 2004, Resolution Chapter 133, SCA 4)

59. **Public Records. Open Meetings.** (Statutes 2004, Resolution Chapter 1, SCA 1)

60. **Election Rights of Political Parties.** (Statutes 2004, Resolution Chapter 103, SCA 18)

60A. **Surplus Property.** (Statutes 2004, Resolution Chapter 103, SCA 18)

INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE

71. **Stem Cell Research. Funding. Bonds.**

INITIATIVE STATUTES

61. **Children's Hospital Projects. Grant Program. Bond Act.**

63. **Mental Health Services Expansion, Funding. Tax on Personal Incomes Above $1 Million.**

64. **Limits on Private Enforcement of Unfair Business Competition Laws.**

69. **DNA Samples. Collection. Database. Funding.**

MEASURES DEFEATED

INITIATIVE CONSTITUTIONAL AMENDMENT

Number on ballot

65. **Local Government Funds, Revenues. State Mandates.**

INITIATIVE CONSTITUTIONAL AMENDMENTS AND STATUTES

62. **Elections. Primaries.**

67. **Emergency Medical Services. Funding. Telephone Surcharge.**

68. **Non-Tribal Commercial Gambling Expansion. Tribal Gaming Compact Amendments. Revenues, Tax Exemptions.**

70. **Tribal Gaming Compacts. Exclusive Gaming Rights. Contributions to State.**

INITIATIVE STATUTE

66. **Limitations on "Three Strikes" Law. Sex Crimes. Punishment.**

REFERENDUM STATUTE

72. **Health Care Coverage Requirements.** (Statutes 2003, Chapter 673, SB 2)

CERTIFICATE OF THE SECRETARY OF STATE

I, KEVIN SHELLEY, Secretary of State of the State of California, hereby certify:

THAT the following is a full, true, and correct statement of the result of the official canvass of the returns of the November 2, 2004, Presidential General Election.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of California, at Sacramento, this 10th day of December, 2004.

KEVIN SHELLEY
Secretary of State

SECRETARY OF STATE

I, KEVIN SHELLEY, Secretary of State of the State of California, hereby certify, based on the records on file in my office:

That pursuant to Government Code section 12167, the following are the results of all elections upon any initiative or referendum measures submitted to the voters of the State within calendar year 2004.

The following proposed laws were **approved** by voters at the Primary Election held on Tuesday, March 2, 2004:

Kindergarten-University Public Education Facilities Bond Act of 2004. (Assembly Bill 16, Chapter 33, Statutes of 2003)

The Economic Recovery Bond Act. (Assembly Bill X5 9, Chapter 2, Statutes of 2003)

The California Balanced Budget Act. (Assembly Constitutional Amendment X5 5, Resolution Chapter 1, Statutes of 2003)

The following proposed laws were **defeated** by voters at the Primary Election held on Tuesday, March 2, 2004:

State Budget, Related Taxes, and Reserve. Voting Requirements. Penalties. Initiative Constitutional Amendment and Statute.

The following proposed laws were **approved** by voters at the General Election held on Tuesday, November 2, 2004:

Protection of Local Government Revenues. (Senate Constitutional Amendment 4, Resolution Chapter 133, Statutes of 2004)

Public Records, Open Meetings. Legislative Constitutional Amendment. (Senate Constitutional Amendment 1, Resolution Chapter 1, Statutes of 2004)

Election Rights of Political Parties. Legislative Constitutional Amendment. (Senate Constitutional Amendment 18, Resolution Chapter 103, Statutes of 2004)

Surplus Property. Legislative Constitutional Amendment. (Senate Constitutional Amendment 18, Resolution Chapter 103, Statutes of 2004)

Children's Hospital Projects. Grant Program. Bond Act. Initiative Statute.

Mental Health Services Expansion, Funding. Tax on Personal Incomes Above $1 Million. Initiative Statute.

Limits on Private Enforcement of Unfair Business Competition Laws. Initiative Statute.

DNA Samples. Collection. Database. Funding. Initiative Statute.

Stem Cell Research. Funding. Bonds. Initiative Constitutional Amendment and Statute.

The following proposed laws were **defeated** by voters at the General Election held on Tuesday, November 2, 2004:

Elections. Primaries. Initiative Constitutional Amendment and Statute.

Local Government Funds, Revenues. State Mandates. Initiative Constitutional Amendment.

Limitations on "Three Strikes" Law. Sex Crimes. Punishment. Initiative Statute.

Emergency Medical Services. Funding. Telephone Surcharge. Initiative Constitutional Amendment and Statute.

Non-Tribal Commercial Gambling Expansion. Tribal Gaming Compact Amendments. Revenues, Tax Exemptions. Initiative Constitutional Amendment and Statute.

Tribal Gaming Compacts. Exclusive Gaming Rights. Contributions to State. Initiative Constitutional Amendment and Statute.

Health Care Coverage Requirements. Referendum.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of California, at Sacramento, this 10th day of December, 2004.

KEVIN SHELLEY
Secretary of State

PROPOSITIONS SUBMITTED TO VOTE OF ELECTORS

Primary Election, March 2, 2004

MEASURES ADOPTED

CONSTITUTIONAL AMENDMENTS SUBMITTED BY LEGISLATURE

Number on ballot

58. **The California Balanced Budget Act.** (2003–04 Fifth Extraordinary Session, Resolution Chapter 1, ACA 5)

[Approved by electors March 2, 2004.]

PROPOSED AMENDMENTS TO ARTICLES IV AND XVI

First—That Section 10 of Article IV is amended to read:

SEC. 10. (a) Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if it is signed by the Governor. The Governor may veto it by returning it with any objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it. If each house then passes the bill by rollcall vote entered in the journal, ~~two thirds~~ *two-thirds* of the membership concurring, it becomes a statute.

(b) (1) Any bill, other than a bill which would establish or change boundaries of any legislative, congressional, or other election district, passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, that is not returned within 30 days after that date becomes a statute.

(2) Any bill passed by the Legislature before September 1 of the second calendar year of the biennium of the legislative session and in the possession of the Governor on or after September 1 that is not returned on or before September 30 of that year becomes a statute.

(3) Any other bill presented to the Governor that is not returned within 12 days becomes a statute.

(4) If the Legislature by adjournment of a special session prevents the return of a bill with the veto message, the bill becomes a statute unless the Governor vetoes the bill within 12 days after it is presented by depositing it and the veto message in the office of the Secretary of State.

(5) If the 12th day of the period within which the Governor is required to perform an act pursuant to paragraph (3) or (4) of this subdivision is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday.

(c) Any bill introduced during the first year of the biennium of the legislative session that has not been passed by the house of origin by January 31 of the

second calendar year of the biennium may no longer be acted on by the house. No bill may be passed by either house on or after September 1 of an even-numbered year except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, and bills passed after being vetoed by the Governor.

(d) The Legislature may not present any bill to the Governor after November 15 of the second calendar year of the biennium of the legislative session.

(e) The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill. The Governor shall append to the bill a statement of the items reduced or eliminated with the reasons for the action. The Governor shall transmit to the house originating the bill a copy of the statement and reasons. Items reduced or eliminated shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills.

(f) (1) If, following the enactment of the budget bill for the 2004–05 fiscal year or any subsequent fiscal year, the Governor determines that, for that fiscal year, General Fund revenues will decline substantially below the estimate of General Fund revenues upon which the budget bill for that fiscal year, as enacted, was based, or General Fund expenditures will increase substantially above that estimate of General Fund revenues, or both, the Governor may issue a proclamation declaring a fiscal emergency and shall thereupon cause the Legislature to assemble in special session for this purpose. The proclamation shall identify the nature of the fiscal emergency and shall be submitted by the Governor to the Legislature, accompanied by proposed legislation to address the fiscal emergency.

(2) If the Legislature fails to pass and send to the Governor a bill or bills to address the fiscal emergency by the 45th day following the issuance of the proclamation, the Legislature may not act on any other bill, nor may the Legislature adjourn for a joint recess, until that bill or those bills have been passed and sent to the Governor.

(3) A bill addressing the fiscal emergency declared pursuant to this section shall contain a statement to that effect.

Second—That Section 12 of Article IV is amended to read:

SEC. 12. (a) Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided.

(b) The Governor and the Governor-elect may require a state agency, officer, or employee to furnish whatever information is deemed necessary to prepare the budget.

(c) *(1)* The budget shall be accompanied by a budget bill itemizing recommended expenditures. ~~The~~

(2) The budget bill shall be introduced immediately in each house by the persons chairing the committees that consider ~~appropriations. The~~ *the budget.*

(3) The Legislature shall pass the budget bill by midnight on June 15 of each year. ~~Until~~

(4) Until the budget bill has been enacted, the Legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted, except emergency bills recommended by the Governor or appropriations for the salaries and expenses of the Legislature.

(d) No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund of the State, except appropriations for the public schools, are void unless passed in each house by rollcall vote entered in the journal, ~~two thirds~~ *two-thirds* of the membership concurring.

(e) The Legislature may control the submission, approval, and enforcement of budgets and the filing of claims for all state agencies.

(f) For the 2004–05 fiscal year, or any subsequent fiscal year, the Legislature may not send to the Governor for consideration, nor may the Governor sign into law, a budget bill that would appropriate from the General Fund, for that fiscal year, a total amount that, when combined with all appropriations from the General Fund for that fiscal year made as of the date of the budget bill's passage, and the amount of any General Fund moneys transferred to the Budget Stabilization Account for that fiscal year pursuant to Section 20 of Article XVI, exceeds General Fund revenues for that fiscal year estimated as of the date of the budget bill's passage. That estimate of General Fund revenues shall be set forth in the budget bill passed by the Legislature.

Third—That Section 1.3 is added to Article XVI thereof, to read:

SEC. 1.3. (a) For the purposes of Section 1, a "single object or work," for which the Legislature may create a debt or liability in excess of three hundred thousand dollars ($300,000) subject to the requirements set forth in Section 1, includes the funding of an accumulated state budget deficit to the extent, and in the amount, that funding is authorized in a measure submitted to the voters at the March 2, 2004, statewide primary election.

(b) As used in subdivision (a), "accumulated state budget deficit" means the aggregate of both of the following, as certified by the Director of Finance:

(1) The estimated negative balance of the Special Fund for Economic Uncertainties arising on or before June 30, 2004, not including the effect of the estimated amount of net proceeds of any bonds issued or to be issued pursuant to the California Fiscal Recovery Financing Act (Title 17 (commencing with Section 99000) of the Government Code) and any bonds issued or to be issued pursuant to the measure submitted to the voters at the March 2, 2004, statewide primary election as described in subdivision (a).

(2) Other General Fund obligations incurred by the State prior to June 30, 2004, to the extent not included in that negative balance.

(c) Subsequent to the issuance of any state bonds described in subdivision (a), the State may not obtain moneys to fund a year-end state budget deficit, as may be defined by statute, pursuant to any of the following: (1) indebtedness incurred pursuant to Section 1 of this article, (2) a debt obligation under which funds to repay that obligation are derived solely from a designated source of revenue, or (3) a bond or similar instrument for the borrowing of moneys for which there is no legal obligation of repayment. This subdivision does not apply to funding obtained through a short-term obligation incurred in anticipation of the receipt of tax proceeds or other revenues that may be applied to the payment of that obligation, for the purposes and not exceeding the amounts of existing appropriations to which the resulting proceeds are to be applied. For purposes of this subdivision, "year-end state budget deficit" does not include an obligation within the accumulated state budget deficit as defined by subdivision (b).

Fourth—That Section 20 is added to Article XVI thereof, to read:

SECTION 20. (a) The Budget Stabilization Account is hereby created in the General Fund.

(b) In each fiscal year as specified in paragraphs (1) to (3), inclusive, the Controller shall transfer from the General Fund to the Budget Stabilization Account the following amounts:

(1) No later than September 30, 2006, a sum equal to 1 percent of the estimated amount of General Fund revenues for the 2006–07 fiscal year.

(2) No later than September 30, 2007, a sum equal to 2 percent of the estimated amount of General Fund revenues for the 2007–08 fiscal year.

(3) No later than September 30, 2008, and annually thereafter, a sum equal to 3 percent of the estimated amount of General Fund revenues for the current fiscal year.

(c) The transfer of moneys shall not be required by subdivision (b) in any fiscal year to the extent that the resulting balance in the account would exceed 5 percent of the General Fund revenues estimate set forth in the budget bill for that fiscal year, as enacted, or eight billion dollars ($8,000,000,000), whichever is greater. The Legislature may, by statute, direct the Controller, for one or more fiscal years, to transfer into the account amounts in excess of the levels prescribed by this subdivision.

(d) Subject to any restriction imposed by this section, funds transferred to the Budget Stabilization Account shall be deemed to be General Fund revenues for all purposes of this Constitution.

(e) The transfer of moneys from the General Fund to the Budget Stabilization Account may be suspended or reduced for a fiscal year as specified by an executive order issued by the Governor no later than June 1 of the preceding fiscal year.

(f) (1) Of the moneys transferred to the account in each fiscal year, 50 percent, up to the aggregate amount of five billion dollars ($5,000,000,000) for all fiscal years, shall be deposited in the Deficit Recovery Bond Retirement Sinking Fund Subaccount, which is hereby created in the account for the purpose of retiring deficit recovery bonds authorized and issued as described in Section 1.3, in addition to any other payments provided for by law for the purpose of retiring those bonds. The moneys in the sinking fund subaccount are continuously appropriated to the Treasurer to be expended for that purpose in the amounts, at the times, and in the manner deemed appropriate by the Treasurer. Any funds remaining in the sinking fund subaccount after all of the deficit recovery bonds are retired shall be transferred to the account, and may be transferred to the General Fund pursuant to paragraph (2).

(2) All other funds transferred to the account in a fiscal year shall not be deposited in the sinking fund subaccount and may, by statute, be transferred to the General Fund.

Fifth—That this measure shall become operative only if the bond measure described in Section 1.3 of Article XVI of the Constitution, as added by this measure, is submitted to and approved by the voters at the March 2, 2004, statewide primary election.

Sixth—That this measure shall be submitted to the voters at the March 2, 2004, statewide primary election.

BOND ACTS SUBMITTED BY LEGISLATURE

Number on ballot

55. **Kindergarten–University Public Education Facilities Bond Act of 2004.** (Statutes 2002, Chapter 33, AB 16)

[Approved by electors March 2, 2004.]

PROPOSED LAW

SEC. 31. Part 68.2 (commencing with Section 100800) is added to the Education Code, to read:

PART 68.2. KINDERGARTEN–UNIVERSITY PUBLIC EDUCATION FACILITIES BOND ACT OF 2004

CHAPTER 1. GENERAL

100800. This part shall be known and may be cited as the Kindergarten–University Public Education Facilities Bond Act of 2004.

100801. The incorporation of, or reference to, any provision of California statutory law in this part includes all acts amendatory thereof and supplementary thereto.

100803. (a) Bonds in the total amount of twelve billion three hundred million dollars ($12,300,000,000), not including the amount of any refunding bonds issued in accordance with Sections 100844 and 100955, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established by Section 15909 or the Higher Education Facilities Finance Committee established pursuant to Section 67353, as the case may be, at any different times necessary to service expenditures required by the apportionments.

CHAPTER 2. KINDERGARTEN THROUGH 12TH GRADE

Article 1. Kindergarten Through 12th Grade School Facilities Program Provisions

100810. The proceeds of bonds issued and sold pursuant to Article 2 (commencing with Section 100825) shall be deposited in the 2004 State School Facilities Fund, which is established in Section 17070.40, and shall be allocated by the State Allocation Board pursuant to this chapter.

100815. All moneys deposited in the 2004 State Facilities Fund for the purposes of this chapter shall be available and, notwithstanding any other provision of law to the contrary, are hereby appropriated to provide aid to school districts, county superintendents of schools, and county boards of education of the state in accordance with the Leroy F. Greene School Facilities Act of 1998

(Chapter 12.5 (commencing with Section 17070.10) of Part 10), as set forth in Section 100820, to provide funds to repay any money advanced or loaned to the 2004 State School Facilities Fund under any act of the Legislature, together with interest provided for in that act, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

100820. (a) The proceeds from the sale of bonds, issued and sold for the purposes of this chapter, shall be allocated in accordance with the following schedule:

(1) The amount of five billion two hundred sixty million dollars ($5,260,000,000) for project funding for new construction of school facilities of applicant school districts under Chapter 12.5 (commencing with Section 17070.10) of Part 10, including, but not limited to, hardship applications.

(A) Of the amount allocated pursuant to this paragraph, up to three hundred million dollars ($300,000,000) shall be available for providing school facilities to charter schools pursuant to a statute enacted after the effective date of the act enacting this section.

(B) If the Housing and Emergency Shelter Trust Fund Act of 2002 is submitted to the voters at the November 5, 2002, general election and fails passage by the voters, of the amount allocated pursuant to this paragraph, twenty-five million dollars ($25,000,000) shall be available for the purposes of Sections 51451.5, 51453, and 51455 of the Health and Safety Code.

(2) The amount of two billion two hundred fifty million dollars ($2,250,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, including, but not limited to, hardship applications.

(3) The amount of two billion four hundred forty million dollars ($2,440,000,000) for deposit into the 2004 Critically Overcrowded School Facilities Account established within the 2004 State School Facilities Fund pursuant to subdivision (e) of Section 17078.10 for the purposes set forth in Article 11 (commencing with Section 17078.10) of Chapter 12.5 of Part 10 relating to critically overcrowded schools, including, but not limited to, hardship applications, and any other new construction or modernization projects as authorized pursuant to Section 17078.30.

(4) The amount of fifty million dollars ($50,000,000) for the purposes set forth in Article 10.6 (commencing with Section 17077.40) of Chapter 12.5 of Part 10 relating to joint-use projects, including, but not limited to, hardship applications.

(b) School districts may use funds allocated pursuant to paragraph (2) of subdivision (a) only for one or more of the following purposes in accordance with Chapter 12.5 (commencing with Section 17070.10) of Part 10:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other modernization of facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10.

(c) Funds allocated pursuant to paragraph (1) of subdivision (a) may, also, be utilized to provide new construction grants for eligible applicant county

boards of education under Chapter 12.5 (commencing with Section 17070.10) of Part 10 for funding classrooms for severely handicapped pupils, or for funding classrooms for county community school pupils.

(d) (1) The Legislature may amend this section to adjust the funding amounts specified in paragraphs (1) to (4), inclusive, of subdivision (a), only by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (4), inclusive, of subdivision (a), but may not increase or decrease the total amount to be expended pursuant to that subdivision.

(e) From the total amounts set forth in paragraphs (1) to (4), inclusive, of subdivision (a), a total of no more than twenty million dollars ($20,000,000) shall be used for the costs of energy conservation adjustments authorized pursuant to Section 17077.35.

(f) Funds available pursuant to this section may be used for acquisition of school facilities authorized pursuant to Section 17280.5.

Article 2. Kindergarten Through 12th Grade School Facilities Fiscal Provisions

100825. (a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 100800), bonds in the total amount of ten billion dollars ($10,000,000,000), not including the amount of any refunding bonds issued in accordance with Section 100844, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established pursuant to Section 15909 at any different times necessary to service expenditures required by the apportionments.

100827. The State School Building Finance Committee, established by Section 15909 and composed of the Governor, the Controller, the Treasurer, the Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall serve as chairperson of the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject

of this chapter and, as that committee, shall have the powers granted to, and duties imposed upon, those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide assistance to the committee as it may require. The Attorney General of the state is the legal adviser of the committee.

100830. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation Board is designated the "board" for purposes of administering the 2004 State School Facilities Fund.

100832. Upon request of the State Allocation Board from time to time, supported by a statement of the apportionments made and to be made for the purposes described in Sections 100815 and 100820, the State School Building Finance Committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to fund the apportionments and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to fund those apportionments progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

100834. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

100835. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100840, appropriated without regard to fiscal years.

100836. The State Allocation Board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

100838. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest

on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

100840. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the State School Building Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2004 State School Facilities Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

100842. All money deposited in the 2004 State School Facilities Fund, that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100844. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100846. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

Chapter 3. Higher Education Facilities

Article 1. General

100850. (a) The system of public higher education in this state includes the University of California, the Hastings College of the Law, the California State University, the California Community Colleges, and their respective off-campus centers.

(b) The 2004 Higher Education Capital Outlay Bond Fund is hereby established in the State Treasury for deposit of funds from the proceeds of bonds issued and sold for the purposes of this chapter.

(c) The Higher Education Facilities Finance Committee established pursuant to Section 67353 is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of providing funds to aid the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges.

Article 2. Program Provisions Applicable to the University of California and the Hastings College of the Law

100852. (a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100900), the sum of six hundred ninety million dollars ($690,000,000) shall be deposited in the 2004 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the University of California and the Hastings College of the Law.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the University of California and the Hastings College of the Law.

Article 3. Program Provisions Applicable to the California State University

100853. (a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100900), the sum of six hundred ninety million dollars ($690,000,000) shall be deposited in the 2004 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the California State University.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the California State University.

Article 4. Program Provisions Applicable to the California Community Colleges

100854. (a) From the proceeds of bonds issued and sold pursuant to Article 5 (commencing with Section 100900), the sum of nine hundred twenty million dollars ($920,000,000) shall be deposited in the 2004 Higher Education Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the California Community Colleges.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher

education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the California Community Colleges.

Article 5. Higher Education Fiscal Provisions

100900. (a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 100800), bonds in the total amount of two billion three hundred million dollars ($2,300,000,000), not including the amount of any refunding bonds issued in accordance with Section 100955, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) It is the intent of the Legislature that the University of California, the California State University, and the California Community Colleges annually consider, as part of their annual capital outlay planning process, the inclusion of facilities that may be used by more than one segment of public higher education (intersegmental), and, that on or before May 15th of each year, those entities report their findings to the budget committees of each house of the Legislature.

(c) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

100910. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For the purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the 2004 Higher Education Capital Outlay Bond Fund is designated as the "board" for projects funded pursuant to this chapter.

(c) The proceeds of the bonds issued and sold pursuant to this chapter shall be available for the purpose of funding aid to the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges, for the construction on existing or new campuses, and their respective off-campus centers and joint use and intersegmental facilities, as set forth in this chapter.

100920. The Higher Education Facilities Finance Committee established pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments for the purposes described in this chapter that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized

pursuant to this chapter in order to carry out the purposes described in this chapter and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

100925. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

100930. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100945, appropriated without regard to fiscal years.

100935. The board, as defined in subdivision (b) of Section 100910, may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board, as defined in subdivision (b) of Section 100910, shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

100940. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

100945. (a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2004 Higher Education Capital Outlay Bond Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in this chapter by the University of California, the Hastings College of the Law, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan. Requests forwarded by a university or college shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college. Requests forwarded by the California Community Colleges shall be accompanied by a five-year capital outlay plan reflecting the needs and priorities of the community college system, prioritized on a statewide basis.

100950. All money deposited in the 2004 Higher Education Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100955. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100960. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

Number on ballot

57. **The Economic Recovery Bond Act.** (2003–04 Fifth Extraordinary Session, Chapter 2, AB 9)

[Approved by electors March 2, 2004.]

PROPOSED LAW

SEC. 3. Title 18 (commencing with Section 99050) is added to the Government Code, to read:

TITLE 18. THE ECONOMIC RECOVERY BOND ACT

CHAPTER 1. GENERAL PROVISIONS

99050. (a) This title shall be known and may be cited as the Economic Recovery Bond Act.

(b) The Legislature finds and declares that it is essential to the public welfare that an efficient, equitable, and alternative source of funding be established in order to preserve public education and critical health and safety programs that otherwise could not be funded in light of the accumulated state budget deficit, and that securing the availability of the proceeds of the bonds proposed to be issued and sold pursuant to this title is the most efficient, equitable, and economical means available.

99051. As used in this title, the following terms have the following meanings:

(a) (1) "Accumulated state budget deficit" has the same meaning as in Section 1.3 of Article XVI of the California Constitution.

(2) The amount referred to in paragraph (1) shall be as certified by the Director of Finance.

(b) "Ancillary obligation" means an obligation of the state entered into in connection with any bonds issued under this title, including the following:

(1) A credit enhancement or liquidity agreement, including any credit enhancement or liquidity agreement in the form of bond insurance, letter of credit, standby bond purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement.

(2) A remarketing agreement.

(3) An auction agent agreement.

(4) A broker-dealer agreement or other agreement relating to the marketing of the bonds.

(5) An interest rate or other type of swap or hedging contract.

(6) An investment agreement, forward purchase agreement, or similar structured investment contract.

(c) "Committee" means the Economic Recovery Financing Committee created pursuant to Section 99055.

(d) "Fund" means the Economic Recovery Fund created pursuant to Section 99060.

(e) "Resolution" means any resolution, trust agreement, indenture, certificate, or other instrument authorizing the issuance of bonds pursuant to this title and providing for their security and repayment.

(f) "Trustee" means the Treasurer or a bank or trust company within or without the state acting as trustee for any issue of bonds under this title and, if there is more than one issue of bonds, the term means the trustee for each issue of bonds, respectively. If there are cotrustees for an issue of bonds, "trustee" means those cotrustees collectively.

CHAPTER 2. ECONOMIC RECOVERY FINANCING COMMITTEE

99055. (a) Solely for the purpose of authorizing the issuance and sale pursuant to the State General Obligation Bond Law of the bonds authorized by this title and the making of those determinations and the taking of other actions as are authorized by this title, the Economic Recovery Financing Committee is hereby created. For purposes of this title, the Economic Recovery Financing Committee is "the committee" as that term is used in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2).

(b) The committee consists of all of the following members:

(1) The Governor or his or her designee.

(2) The Director of Finance.

(3) The Treasurer.

(4) The Controller.

(5) The Secretary of Business, Transportation and Housing.

(6) The Director of General Services.

(7) The Director of Transportation.

(c) Notwithstanding any other provision of law, any member may designate a deputy to act as that member in his or her place and stead for all purposes, as though the member were personally present.

(d) The Legislature finds and declares that each member of the committee has previously acted as a member of a similar finance committee.

(e) A majority of the members of the committee shall constitute a quorum of the committee and may act for the committee.

(f) The Director of Finance shall serve as chairperson of the committee.

Chapter 3. Economic Recovery Fund

99060. (a) The proceeds of bonds issued and sold pursuant to this title shall be deposited in the Economic Recovery Fund, which is hereby established in the State Treasury.

(b) Moneys in the fund shall be invested in the Surplus Money Investment Fund, and any income from that investment shall be credited to the fund.

(c) Except for amounts necessary to pay costs of issuance, administrative costs, and any other costs payable in connection with the bonds, and to retire or refund bonds issued and sold pursuant to this title or bonds issued and sold under Title 17 (commencing with Section 99000), the remaining balance of the fund, as determined by the committee, shall be transferred to the General Fund to fund the purposes set forth in this title.

99062. Out of the first money realized from the sale of bonds as provided in this chapter, there shall be redeposited in the General Obligation Bond Expense Revolving Fund, established by Section 16724.5, the amount of all expenditures made for purposes specified in that section, and this money may be used for the same purpose and repaid in the same manner whenever additional bond sales are made.

99064. The proceeds of the bonds issued and sold pursuant to this chapter shall be available for the purpose of providing an efficient, equitable, and economical means of doing both of the following:

(a) Funding the accumulated state budget deficit, which may be accomplished in part by refunding or repaying bonds issued pursuant to Title 17 (commencing with Section 99000).

(b) Paying costs relating to the issuance of bonds under this title, including, but not limited to, providing reserves, capitalized interest, and the costs of obtaining or entering into any ancillary obligation, costs associated with the repayment or refunding of the fiscal recovery bonds issued pursuant to Title 17 (commencing with Section 99000), and administrative and other costs associated with implementing the purposes of this title.

Chapter 4. Bond Provisions

99065. (a) Subject to subdivision (b), bonds in the total amount of fifteen billion dollars ($15,000,000,000), not including the amount of any refunding bonds issued in accordance with Section 99075, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this title and to reimburse the General Obligation Bond Expense Revolving Fund, pursuant to Section 16724.5. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable. Additionally, the bonds, when sold, shall be secured by a pledge of revenues and any other amounts in the Fiscal Recovery Fund created pursuant to Section 99008. The bonds may be secured by different lien priorities on amounts in the Fiscal Recovery Fund.

(b) The amount of bonds that may be issued and sold pursuant to subdivision (a) shall be reduced by the amount of bonds issued pursuant to Title 17 (commencing with Section 99000), and by the amount of bonds issued pursuant to the California Pension Obligation Financing Act (Chapter 7 (commencing with Section 16910) of Part 3 of Division 4 of Title 2), except to the extent those bonds will be retired, defeased, or redeemed with the proceeds of bonds authorized by this title.

(c) Pursuant to this section, the Treasurer shall sell the bonds authorized by the committee. The bonds shall be sold upon the terms and conditions specified in a resolution to be adopted by the committee pursuant to Section 16731 and Section 99070. Whenever the committee deems it necessary for an effective sale of the bonds, the committee may authorize the Treasurer to sell any issue of bonds at less than their par value. Notwithstanding Section 16754.3, the discount with respect to any issue of the bonds shall not exceed 3 percent of the par value thereof, net of any premium.

99066. The bonds authorized by this title shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2), and all of the provisions of that law, except subdivisions (a) and (b) of Section 16727 or any other provision in that law that is inconsistent with the terms of this title, apply to the bonds and to this title and are hereby incorporated in this title as though set forth in full in this title.

99067. For purposes of this title, the Department of Finance is designated the "board" as that term is used in the State General Obligation Bond Law.

99069. Notwithstanding any other provision of this title, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this title that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes subject to designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and for the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds that is required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

99070. (a) (1) The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this title in order to carry out the purposes of this title and, if so, the amount of bonds to be issued and sold, the times at which the proceeds of the bonds authorized by this title shall be required to be available, and those other terms and conditions for the bonds authorized by this title as it shall determine necessary or desirable.

(2) In addition to all other powers specifically granted in this title and the State General Obligation Bond Law, the committee may do all things necessary or convenient to carry out the powers and purposes of this title, including the approval of any indenture and any ancillary obligation relating to those bonds, and the delegation of necessary duties to the chairperson, and to the Treasurer as agent for sale of the bonds.

(3) The committee shall determine the amount of the bonds to be issued so that the net proceeds of the bonds issued to fund the accumulated budget deficit, when added to the net proceeds of any bonds issued pursuant to Title 17 (commencing with Section 99000) for that purpose, exclusive of bonds issued

pursuant to this title for the purpose of refunding bonds issued pursuant to this title or Title 17 (commencing with Section 99000), will not exceed fifteen billion dollars ($15,000,000,000) in the aggregate. Nothing in this section shall be construed to limit the ability of the committee to authorize the issuance of any amount of bonds that it shall determine necessary or appropriate to accomplish the purposes of this title, including the refunding or redemption of the bonds issued pursuant to Title 17 (commencing with Section 99000), subject to the limit on the total amount of bonds set forth in Section 99065.

(b) Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time. In addition to all other powers specifically granted in this title and the State General Obligation Bond Law, the committee may do all things necessary or convenient, including the delegation of necessary duties to the chairperson and to the Treasurer as agent for sale of the bonds, to carry out the powers and purposes of this title.

99071. The principal of and interest on the bonds and the payment of any ancillary obligations shall be payable from and secured by a pledge of all state sales and use tax revenues in the Fiscal Recovery Fund established pursuant to Section 99008 and any earnings thereon. To the extent that moneys in the Fiscal Recovery Fund are deemed insufficient to make these payments, pursuant to an estimate certified by the Director of Finance and approved by the committee, there shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds and the payment of any ancillary obligations for which payment is authorized by this title and for which the full faith and credit of the state has been pledged. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

99072. (a) Notwithstanding Section 13340, there is hereby continuously appropriated from the Fiscal Recovery Fund established pursuant to Section 99008 an amount that will equal the total of the following:

(1) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold as described in Section 99070, as the principal and interest become due and payable, together with any amount necessary to satisfy any reserve and coverage requirements in the resolution.

(2) The sum necessary to pay any ancillary obligations entered into in connection with the bonds.

(3) Any trustee and other administrative costs incurred in connection with servicing the bonds and ancillary obligations.

(4) Redemption, retirement, defeasance or purchase of any bonds as authorized by the committee prior to their stated maturity dates.

(b) Notwithstanding Section 13340, if the funds appropriated by subdivision (a) are estimated to be insufficient to meet the requirement specified in paragraphs (1) to (4), inclusive, of subdivision (a), as approved pursuant to Section 99071, there is hereby continuously appropriated from the General Fund, for the purposes of this chapter, an amount that will provide sufficient revenues to meet whatever requirements specified in paragraphs (1) to (4), inclusive, of subdivision (a) cannot be met from revenues appropriated from the Fiscal Recovery Fund.

(c) The sales and use tax revenues received pursuant to Sections 6051.5 and 6201.5 of the Revenue and Taxation Code and deposited into the Fiscal Recovery Fund are hereby irrevocably pledged to the payment of principal and interest on the bonds issued pursuant to this title, to payment of any ancillary obligations, and to costs necessary for servicing and administering the bonds and ancillary obligations. The Legislature may elect to deposit additional revenues in the Fiscal Recovery Fund. The pledge of this subdivision shall vest automatically upon execution and delivery of any resolution or agreement relating to ancillary obligations, without the need for any notice or filing in any office or location.

99074. All money deposited in the Economic Recovery Fund that is derived from accrued interest on bonds sold shall be reserved in that fund and shall be available for transfer to the Fiscal Recovery Fund as a credit to expenditures for bond interest.

99075. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2, which is a part of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of the bonds described in this title shall include approval of the issuance of any bonds issued to refund any bonds originally issued under this title or any previously issued refunding bonds.

99076. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this title are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

99077. The state hereby pledges and agrees with the holders of any bonds issued pursuant to this title that it will not reduce the rate of imposition of either of the taxes imposed pursuant to Sections 6051.5 and 6201.5 of the Revenue and Taxation Code, which generate the revenue deposited in the Fiscal Recovery Fund.

SEC. 8. Sections 1 to 4.20, inclusive, of this act shall become operative only if both of the following occur:

(a) ACA 5 of the 2003–04 Fifth Extraordinary Session is submitted to and approved by the voters at the March 2, 2004, statewide primary election.

(b) The voters adopt the Economic Recovery Bond Act, as set forth in Section 3 of this act.

MEASURES DEFEATED

INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE

Number on ballot

56. **State Budget, Related Taxes, and Reserve. Voting Requirements. Penalties.**

[Submitted by the initiative and rejected by electors March 2, 2004.]

PROPOSED LAW

SECTION 1. Title

This measure shall be known and may be cited as the "Budget Accountability Act."

SEC. 2. Findings and Declaration of Purpose

The People of the State of California find and declare that:

The Budget Accountability Act is designed to end the budget delays that have created a fiscal crisis in our state. The purpose of this measure is to enact a comprehensive reform of the state budget process designed to hold the Governor and Legislature more accountable to the People of California by producing more responsible and timely state budgets.

(a) After the Governor introduces the budget, the State Legislature and Governor have almost six months to complete the budget on time. However, the State Legislature has not passed a budget on time since 1986.

(b) The State Legislature and the Governor face no consequences when they fail to meet the budget deadline imposed by the State Constitution. They can continue to collect their salary and expense allowances. They are not required to continue to work on the budget. In fact, they can even go on vacation.

(c) In order to hold elected officials accountable, voters are entitled to know how their tax dollars are spent each year and how their state representatives vote on the budget and taxes. Currently voters do not have easy access to this information.

(d) The two-thirds vote requirement to pass a state budget and related taxes has contributed to persistent late budgets and large deficits. Political party leaders refuse to compromise to solve the state's budget problem and have used the two-thirds vote requirement to hold up the budget.

(e) California, Rhode Island, and Arkansas are the only states in the country that require a vote of two-thirds or more of the legislature to pass a budget.

(f) After researching California's two-thirds vote requirement, the nonpartisan California Citizens Budget Commission concluded that "the current supermajority requirement fails to achieve its oft-stated goal of keeping budgetary spending in check, while at the same time it promotes gridlock, pork barrel legislation and lack of accountability."

(g) When the economy weakens, the state budget goes into deficit. These deficits are increased by the gridlock caused by the two-thirds vote requirement. These deficits increase year after year until they equal many billions of dollars. Faced with these huge deficits, the Governor and Legislature make massive cuts to education, health care, and transportation and raise billions of dollars in taxes. These deep cuts and large tax increases would not have been necessary if responsible budget solutions had been possible instead of year after year of gridlock.

(h) Party leaders threaten to punish state legislators if they refuse to vote the party line on the budget. Members of the Legislature should be accountable to their constituents, not to party leaders. Our elected representatives must be free to vote their consciences.

(i) California has faced large budget deficits and surpluses over the past 10 years. Elected officials from both major parties have increased spending and cut taxes in good economic times, leaving the State with inadequate reserves when the economy turns bad. Saving money in a rainy day fund in good times provides a prudent reserve during economic downturns and states of emergency, which is essential for responsible budget management.

SEC. 3. Purpose and Intent

(1) In order to make elected officials more responsible for the consequences of their actions, to keep voters more informed of the budget decisions being made by their legislators, to limit partisan extremism and end gridlock in the

budget process, and to require a rainy day reserve fund to balance the budget in hard times and protect California taxpayers, the People of the State of California do hereby enact the Budget Accountability Act. This measure is intended to accomplish its purpose by amending the California Constitution and the statutes of California to:

(a) Prohibit the Legislature and Governor from collecting their salary and expenses for every day they miss the budget deadline set by the Constitution and to force the Legislature to stay in session and consider the budget until it is passed.

(b) Help voters hold their state representatives more accountable by providing voters with a two-page summary of how the State is spending the funds it receives. The summary will be published in the state ballot pamphlet mailed to voters before every statewide election. The summary will include a website address where voters can find the voting record of their representatives on all budget and related legislation, including tax bills, that are subject to the 55 percent vote requirement.

(c) Change the votes necessary to pass the budget and related tax and other legislation from two-thirds to 55 percent to improve accountability to voters, reduce budget gridlock, and encourage legislators to work together to solve California's budget problems regardless of their party affiliation.

(d) Allow legislators to vote their consciences on the budget instead of being pressured into voting the party line. A legislator who is threatened by another legislator because of a vote on the budget will be able to file a complaint with the Ethics Committees of the Senate or Assembly, which will investigate the complaint and make public its report and recommendation for appropriate action to the full Senate or the Assembly.

(e) Ensure funds are set aside in a rainy day reserve fund in good economic times when revenues exceed what is needed for existing programs so that when revenues fall short in times of economic downturn the reserve fund can be used to reduce the need for drastic cuts in programs and increases in taxes. The reserve fund could also be used for a state of emergency declared by the Governor. The reserve fund may only be used for these purposes and may not be used to increase spending.

(2) The Budget Accountability Act will not change Proposition 13's property tax limitations in any way. The Budget Accountability Act changes the legislative vote requirement for taxes to 55 percent only for the purpose of increasing taxes as part of the process of adopting the budget.

SEC. 4. Section 12 of Article IV of the California Constitution is amended to read:

SEC. 12. (a) Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided.

(b) The Governor and the Governor-elect may require a state agency, officer or employee to furnish whatever information is deemed necessary to prepare the budget.

(c) The budget shall be accompanied by a budget bill itemizing recommended expenditures. The bill shall be introduced immediately in each house by the persons chairing the committees that consider appropriations. The Legislature

shall pass the budget bill by midnight on June 15 of each year. Until the budget bill has been enacted, the Legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted, except emergency bills recommended by the Governor ~~or appropriations for the salaries and expenses of the Legislature~~.

(d) *If the budget bill has not been passed and sent to the Governor by June 15, the Legislature shall remain in session and may not consider or pass any other bills until the budget and bills related to the budget are adopted, except for emergency bills recommended by the Governor. Neither the Governor nor any member of the Legislature shall be entitled to any salary, per diem, or other expense allowance for any day after the June 15 deadline until a budget bill has been passed and sent to the Governor. No forfeited salary, per diem, or expense allowance shall be paid retroactively. In the event the Governor vetoes the budget bill, the prohibitions of this subdivision shall remain in effect until a budget is passed and signed by the Governor.*

(e) No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund of the State, except *appropriations in the budget bill and in other bills related to the budget bill and* appropriations for the public schools, are void unless passed in each house by rollcall vote entered in the journal, two thirds of the membership concurring.

~~(e)~~

(f) (1) Notwithstanding Section 3 of Article XIII A or any other provision of law or of this Constitution, the budget bill and tax and other bills related to the budget bill may be passed in each house by rollcall vote entered in the journal, 55 percent of the membership concurring, to take effect immediately upon being signed by the Governor or upon a date specified in the legislation. Nothing in this subdivision shall affect the vote requirement for appropriations for the public schools contained in subdivision (e) of this section and in subdivision (b) of Section 8 of this article.

(2) Tax and other bills related to the budget bill shall consist only of bills identified as related to the budget in the budget bill passed by the Legislature.

(3) Tax bills related to the budget bill shall include bills increasing taxes, whether by increased rates or changes in methods of computation, identified in the budget bill as related to the budget, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

(g) No officer, committee, or member of either house of the Legislature shall punish or threaten to punish any other member for his or her vote on the budget bill or tax and other bills related to the budget. Any member may file a complaint regarding violations of this section with the appropriate ethics committee of the house in which the alleged violation occurred. The ethics committee shall investigate the complaint and make recommendations to the full house regarding appropriate action, including censure, to be taken on the complaint. The ethics committee's findings shall be made public.

(h) For any fiscal year for which General Fund revenues exceed the amount needed to fund current General Fund service levels, the Legislature shall deposit at least 25 percent of the excess revenues into the Prudent State Reserve Fund established pursuant to Section 5.5 of Article XIII B, unless the Reserve Fund equals 5 percent or more of General Fund expenditures for the fiscal year immediately preceding that fiscal year. Appropriations from the fund may be

made only in years in which revenues are not sufficient to fund current General Fund service levels or in response to a state of emergency declared by the Governor. Appropriations from the fund may be used only for these purposes and may not be used to increase expenditures. Notwithstanding Section 5 of Article XIII B, contributions to the fund shall not constitute appropriations subject to limitation until they are appropriated for expenditure from the fund.

(i) The Legislature may control the submission, approval, and enforcement of budgets and the filing of claims for all state agencies.

SEC. 5. Section 9082.8 is added to the Elections Code, to read:

9082.8. The Controller, in consultation with the Department of Finance and the Legislative Analyst's Office, shall prepare a budget summary explaining how state funds are spent, not to exceed two printed pages, which shall be published in the state ballot pamphlet sent to voters in every statewide election. The budget summary shall include directions to a state website, prepared and maintained by the Joint Rules Committee of the Legislature, that includes voting records of members of the Legislature on the budget and tax and other bills related to the budget.

SEC. 6. Section 9518 is added to the Government Code, to read:

9518. For the purposes of subdivision (h) of Section 12 of Article IV of the California Constitution, "current General Fund service levels" means levels of service as of June 30 of the prior fiscal year necessary to meet the constitutional, statutory, and contractual obligations of the state adjusted for population and cost of living as provided in Section 8 of Article XIII B of the California Constitution as of the effective date of this measure.

SEC. 7. Severability

If any of the provisions of this measure or the applicability of any provision of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, such finding shall not affect the remaining provision or applications of this measure to other persons or circumstances, and to that extent the provisions of this measure are deemed to be severable.

SEC. 8. Amendment

By rollcall vote entered in the journal of each house, 55 percent of the membership concurring the Legislature may amend Section 9082.8 of the Elections Code and Section 9518 of the Government Code to further the purposes of this measure.

SEC. 9. Conflicting Initiatives

In the event that this measure and another measure or measures relating to the legislative votes required to pass the state budget, increase taxes, or enact or increase fees shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the other measure shall be null and void.

PROPOSITIONS SUBMITTED TO VOTE OF ELECTORS

General Election, November 2, 2004

MEASURES ADOPTED

CONSTITUTIONAL AMENDMENT SUBMITTED BY LEGISLATURE

Number on ballot

1A. **Protection of Local Government Revenues.** (Statutes 2004, Resolution Chapter 133, SCA 4)

[Approved by electors November 2, 2004.]

PROPOSED AMENDMENTS TO ARTICLES XI, XIII, AND XIII B

First—That Section 15 of Article XI thereof is amended to read:

SEC. 15. (a) ~~All~~ *From the* revenues *derived* from taxes imposed pursuant to the Vehicle License Fee Law *(Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code)*, or its successor, other than fees on trailer coaches and mobilehomes, over and above the costs of collection and any refunds authorized by law, *those revenues derived from that portion of the vehicle license fee rate that does not exceed 0.65 percent of the market value of the vehicle* shall be allocated ~~to counties and cities according to statute.~~

~~(b) This section shall apply to those taxes imposed pursuant to that law on and after July 1 following the approval of this section by the voters.~~ *as follows:*

(1) An amount shall be specified in the Vehicle License Fee Law, or the successor to that law, for deposit in the State Treasury to the credit of the Local Revenue Fund established in Chapter 6 (commencing with Section 17600) of Part 5 of Division 9 of the Welfare and Institutions Code, or its successor, if any, for allocation to cities, counties, and cities and counties as otherwise provided by law.

(2) The balance shall be allocated to cities, counties, and cities and counties as otherwise provided by law.

(b) If a statute enacted by the Legislature reduces the annual vehicle license fee below 0.65 percent of the market value of a vehicle, the Legislature shall, for each fiscal year for which that reduced fee applies, provide by statute for the allocation of an additional amount of money that is equal to the decrease, resulting from the fee reduction, in the total amount of revenues that are otherwise required to be deposited and allocated under subdivision (a) for that same fiscal year. That amount shall be allocated to cities, counties, and cities and counties in the same pro rata amounts and for the same purposes as are revenues subject to subdivision (a).

Second—That Section 25.5 is added to Article XIII thereof, to read:

SEC. 25.5. (a) On or after November 3, 2004, the Legislature shall not enact a statute to do any of the following:

(1) (A) Except as otherwise provided in subparagraph (B), modify the manner in which ad valorem property tax revenues are allocated in accordance

with subdivision (a) of Section 1 of Article XIII A so as to reduce for any fiscal year the percentage of the total amount of ad valorem property tax revenues in a county that is allocated among all of the local agencies in that county below the percentage of the total amount of those revenues that would be allocated among those agencies for the same fiscal year under the statutes in effect on November 3, 2004. For purposes of this subparagraph, "percentage" does not include any property tax revenues referenced in paragraph (2).

(B) Beginning with the 2008–09 fiscal year and except as otherwise provided in subparagraph (C), subparagraph (A) may be suspended for a fiscal year if all of the following conditions are met:

(i) The Governor issues a proclamation that declares that, due to a severe state fiscal hardship, the suspension of subparagraph (A) is necessary.

(ii) The Legislature enacts an urgency statute, pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, that contains a suspension of subparagraph (A) for that fiscal year and does not contain any other provision.

(iii) No later than the effective date of the statute described in clause (ii), a statute is enacted that provides for the full repayment to local agencies of the total amount of revenue losses, including interest as provided by law, resulting from the modification of ad valorem property tax revenue allocations to local agencies. This full repayment shall be made not later than the end of the third fiscal year immediately following the fiscal year to which the modification applies.

(C) (i) Subparagraph (A) shall not be suspended for more than two fiscal years during any period of 10 consecutive fiscal years, which period begins with the first fiscal year for which subparagraph (A) is suspended.

(ii) Subparagraph (A) shall not be suspended during any fiscal year if the full repayment required by a statute enacted in accordance with clause (iii) of subparagraph (B) has not yet been completed.

(iii) Subparagraph (A) shall not be suspended during any fiscal year if the amount that was required to be paid to cities, counties, and cities and counties under Section 10754.11 of the Revenue and Taxation Code, as that section read on November 3, 2004, has not been paid in full prior to the effective date of the statute providing for that suspension as described in clause (ii) of subparagraph (B).

(iv) A suspension of subparagraph (A) shall not result in a total ad valorem property tax revenue loss to all local agencies within a county that exceeds 8 percent of the total amount of ad valorem property tax revenues that were allocated among all local agencies within that county for the fiscal year immediately preceding the fiscal year for which subparagraph (A) is suspended.

(2) (A) Except as otherwise provided in subparagraphs (B) and (C), restrict the authority of a city, county, or city and county to impose a tax rate under, or change the method of distributing revenues derived under, the Bradley-Burns Uniform Local Sales and Use Tax Law set forth in Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, as that law read on November 3, 2004. The restriction imposed by this subparagraph also applies to the entitlement of a city, county, or city and county to the change in tax rate resulting from the end of the revenue exchange period, as defined in Section 7203.1 of the Revenue and Taxation Code as that section read on November 3, 2004.

(B) The Legislature may change by statute the method of distributing the revenues derived under a use tax imposed pursuant to the Bradley- Burns Uniform Local Sales and Use Tax Law to allow the State to participate in an interstate compact or to comply with federal law.

(C) The Legislature may authorize by statute two or more specifically identified local agencies within a county, with the approval of the governing body of each of those agencies, to enter into a contract to exchange allocations of ad valorem property tax revenues for revenues derived from a tax rate imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law. The exchange under this subparagraph of revenues derived from a tax rate imposed under that law shall not require voter approval for the continued imposition of any portion of an existing tax rate from which those revenues are derived.

(3) Except as otherwise provided in subparagraph (C) of paragraph (2), change for any fiscal year the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring.

(4) Extend beyond the revenue exchange period, as defined in Section 7203.1 of the Revenue and Taxation Code as that section read on November 3, 2004, the suspension of the authority, set forth in that section on that date, of a city, county, or city and county to impose a sales and use tax rate under the Bradley-Burns Uniform Local Sales and Use Tax Law.

(5) Reduce, during any period in which the rate authority suspension described in paragraph (4) is operative, the payments to a city, county, or city and county that are required by Section 97.68 of the Revenue and Taxation Code, as that section read on November 3, 2004.

(6) Restrict the authority of a local entity to impose a transactions and use tax rate in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code), or change the method for distributing revenues derived under a transaction and use tax rate imposed under that law, as it read on November 3, 2004.

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

(1) "Ad valorem property tax revenues" means all revenues derived from the tax collected by a county under subdivision (a) of Section 1 of Article XIII A, regardless of any of this revenue being otherwise classified by statute.

(2) "Local agency" has the same meaning as specified in Section 95 of the Revenue and Taxation Code as that section read on November 3, 2004.

Third—That Section 6 of Article XIII B thereof is amended to read:

SEC. 6. *(a)* Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse ~~such~~ *that* local government for the costs of ~~such~~ *the* program or increased level of service, except that the Legislature may, but need not, provide ~~such~~ *a* subvention of funds for the following mandates:

~~(a)~~

(1) Legislative mandates requested by the local agency affected ~~;~~.

~~(b)~~

(2) Legislation defining a new crime or changing an existing definition of a crime~~; or~~.

~~(c)~~

(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(b) (1) Except as provided in paragraph (2), for the 2005–06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004–05 fiscal year that have not been paid prior to the 2005–06 fiscal year may be paid over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

Fourth—That the people find and declare that this measure and the Taxpayers and Public Safety Protection Act, which appears as Proposition 65 on the November 2, 2004, general election ballot (hereafter Proposition 65) both relate to local government, including matters concerning tax revenues and reimbursement for the cost of state mandates, in a comprehensive and substantively conflicting manner. Because this measure is intended to be a comprehensive and competing alternative to Proposition 65, it is the intent of the people that this measure supersede in its entirety Proposition 65, if this measure and Proposition 65 both are approved and this measure receives a higher number of affirmative votes than Proposition 65. Therefore, in the event that this measure and Proposition 65 both are approved and this measure receives a higher number of affirmative votes, none of the provisions of Proposition 65 shall take effect.

Number on ballot

59. **Public Records. Open Meetings.** (Statutes 2004, Resolution Chapter 1, SCA 1)

[Approved by electors November 2, 2004.]

PROPOSED AMENDMENT TO SECTION 3 OF ARTICLE I

SEC. 3. *(a)* The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

Number on ballot

60. **Election Rights of Political Parties.** (Statutes 2004, Resolution Chapter 103, SCA 18)

[Approved by electors November 2, 2004.]

PROPOSED AMENDMENT TO ARTICLE II

That Section 5 of Article II thereof is amended to read:

SEC. 5. *(a)* The Legislature shall provide for primary elections for partisan offices, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

(b) A political party that participated in a primary election for a partisan office has the right to participate in the general election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party's candidates.

Number on ballot

60A. **Surplus Property.** (Statutes 2004, Resolution Chapter 103, SCA 18)

[Approved by electors November 2, 2004.]

PROPOSED AMENDMENT TO ARTICLE III

That Section 9 is added to Article III thereof, to read:

SEC. 9. The proceeds from the sale of surplus state property occurring on or after the effective date of this section, and any proceeds from the previous sale of surplus state property that have not been expended or encumbered as of that date, shall be used to pay the principal and interest on bonds issued pursuant to the Economic Recovery Bond Act authorized at the March 2, 2004, statewide primary election. Once the principal and interest on those bonds are fully paid, the proceeds from the sale of surplus state property shall be deposited into the Special Fund for Economic Uncertainties, or any successor fund. For purposes of this section, surplus state property does not include property purchased with revenues described in Article XIX or any other special fund moneys.

INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE

Number on ballot

71. **Stem Cell Research. Funding. Bonds.**

[Submitted by the initiative and approved by electors November 2, 2004.]

PROPOSED LAW

CALIFORNIA STEM CELL RESEARCH AND CURES INITIATIVE

SECTION 1. Title

This measure shall be known as the "California Stem Cell Research and Cures Act."

SEC. 2. Findings and Declarations

The people of California find and declare the following:

Millions of children and adults suffer from devastating diseases or injuries that are currently incurable, including cancer, diabetes, heart disease, Alzheimer's, Parkinson's, spinal cord injuries, blindness, Lou Gehrig's disease, HIV/AIDS, mental health disorders, multiple sclerosis, Huntington's disease, and more than 70 other diseases and injuries.

Recently medical science has discovered a new way to attack chronic diseases and injuries. The cure and treatment of these diseases can potentially be accomplished through the use of new regenerative medical therapies including a special type of human cells, called stem cells. These life-saving medical breakthroughs can only happen if adequate funding is made available to advance stem cell research, develop therapies, and conduct clinical trials.

About half of California's families have a child or adult who has suffered or will suffer from a serious, often critical or terminal, medical condition that could potentially be treated or cured with stem cell therapies. In these cases of chronic illness or when patients face a medical crisis, the health care system may simply not be able to meet the needs of patients or control spiraling costs, unless therapy focus switches away from maintenance and toward prevention and cures.

Unfortunately, the federal government is not providing adequate funding necessary for the urgent research and facilities needed to develop stem cell therapies to treat and cure diseases and serious injuries. This critical funding gap currently prevents the rapid advancement of research that could benefit millions of Californians.

The California Stem Cell Research and Cures Act will close this funding gap by establishing an institute which will issue bonds to support stem cell research, emphasizing pluripotent stem cell and progenitor cell research and other vital medical technologies, for the development of life-saving regenerative medical treatments and cures.

SEC. 3. Purpose and Intent

It is the intent of the people of California in enacting this measure to:

Authorize an average of $295 million per year in bonds over a 10-year period to fund stem cell research and dedicated facilities for scientists at California's universities and other advanced medical research facilities throughout the state.

Maximize the use of research funds by giving priority to stem cell research that has the greatest potential for therapies and cures, specifically focused on pluripotent stem cell and progenitor cell research among other vital research

opportunities that cannot, or are unlikely to, receive timely or sufficient federal funding, unencumbered by limitations that would impede the research. Research shall be subject to accepted patient disclosure and patient consent standards.

Assure that the research is conducted safely and ethically by including provisions to require compliance with standards based on national models that protect patient safety, patient rights, and patient privacy.

Prohibit the use of bond proceeds of this initiative for funding for human reproductive cloning.

Improve the California health care system and reduce the long-term health care cost burden on California through the development of therapies that treat diseases and injuries with the ultimate goal to cure them.

Require strict fiscal and public accountability through mandatory independent audits, open meetings, public hearings, and annual reports to the public. Create an Independent Citizen's Oversight Committee composed of representatives of the University of California campuses with medical schools; other California universities and California medical research institutions; California disease advocacy groups; and California experts in the development of medical therapies.

Protect and benefit the California budget: by postponing general fund payments on the bonds for the first five years; by funding scientific and medical research that will significantly reduce state health care costs in the future; and by providing an opportunity for the state to benefit from royalties, patents, and licensing fees that result from the research.

Benefit the California economy by creating projects, jobs, and therapies that will generate millions of dollars in new tax revenues in our state.

Advance the biotech industry in California to world leadership, as an economic engine for California's future.

SEC. 4. Article XXXV is added to the California Constitution, to read:

Article XXXV. Medical Research

SECTION 1. There is hereby established the California Institute for Regenerative Medicine.

SEC. 2. The institute shall have the following purposes:

(a) To make grants and loans for stem cell research, for research facilities, and for other vital research opportunities to realize therapies, protocols, and/or medical procedures that will result in, as speedily as possible, the cure for, and/or substantial mitigation of, major diseases, injuries, and orphan diseases.

(b) To support all stages of the process of developing cures, from laboratory research through successful clinical trials.

(c) To establish the appropriate regulatory standards and oversight bodies for research and facilities development.

SEC. 3. No funds authorized for, or made available to, the institute shall be used for research involving human reproductive cloning.

SEC. 4. Funds authorized for, or made available to, the institute shall be continuously appropriated without regard to fiscal year, be available and used only for the purposes provided in this article, and shall not be subject to appropriation or transfer by the Legislature or the Governor for any other purpose.

SEC. 5. There is hereby established a right to conduct stem cell research which includes research involving adult stem cells, cord blood stem cells, pluripotent stem cells, and/or progenitor cells. Pluripotent stem cells are cells that are capable of self-renewal, and have broad potential to differentiate into multiple adult cell types. Pluripotent stem cells may be derived from

somatic cell nuclear transfer or from surplus products of in vitro fertilization treatments when such products are donated under appropriate informed consent procedures. Progenitor cells are multipotent or precursor cells that are partially differentiated, but retain the ability to divide and give rise to differentiated cells.

SEC. 6. Notwithstanding any other provision of this Constitution or any law, the institute, which is established in state government, may utilize state issued tax-exempt and taxable bonds to fund its operations, medical and scientific research, including therapy development through clinical trials, and facilities.

SEC. 7. Notwithstanding any other provision of this Constitution, including Article VII, or any law, the institute and its employees are exempt from civil service.

SEC. 5. Chapter 3 (commencing with Section 125290.10) is added to Part 5 of Division 106 of the Health and Safety Code, to read:

CHAPTER 3. CALIFORNIA STEM CELL RESEARCH AND CURES BOND ACT

Article 1. California Stem Cell Research and Cures Act

125290.10. General—Independent Citizen's Oversight Committee (ICOC)

This chapter implements Article XXXV of the California Constitution, which established the California Institute for Regenerative Medicine (institute).

125290.15. Creation of the ICOC

There is hereby created the Independent Citizen's Oversight Committee, hereinafter, the ICOC, which shall govern the institute and is hereby vested with full power, authority, and jurisdiction over the institute.

125290.20. ICOC Membership; Appointments; Terms of Office

(a) ICOC Membership

The ICOC shall have 29 members, appointed as follows:

(1) The Chancellors of the University of California at San Francisco, Davis, San Diego, Los Angeles, and Irvine, shall each appoint an executive officer from his or her campus.

(2) The Governor, the Lieutenant Governor, the Treasurer, and the Controller shall each appoint an executive officer from the following three categories:

(A) A California university, excluding the five campuses of the University of California described in paragraph (1), that has demonstrated success and leadership in stem cell research, and that has:

(i) A nationally ranked research hospital and medical school; this criteria will apply to only two of the four appointments.

(ii) A recent proven history of administering scientific and/or medical research grants and contracts in an average annual range exceeding one hundred million dollars ($100,000,000).

(iii) A ranking, within the past five years, in the top 10 United States universities with the highest number of life science patents or that has research or clinical faculty who are members of the National Academy of Sciences.

(B) A California nonprofit academic and research institution that is not a part of the University of California, that has demonstrated success and leadership in stem cell research, and that has:

(i) A nationally ranked research hospital or that has research or clinical faculty who are members of the National Academy of Sciences.

(ii) A proven history in the last five years of managing a research budget in the life sciences exceeding twenty million dollars ($20,000,000).

(C) A California life science commercial entity that is not actively engaged in researching or developing therapies with pluripotent or progenitor stem cells, that has a background in implementing successful experimental medical

therapies, and that has not been awarded, or applied for, funding by the institute at the time of appointment. A board member of that entity with a successful history of developing innovative medical therapies may be appointed in lieu of an executive officer.

(D) Only one member shall be appointed from a single university, institution, or entity. The executive officer of a California university, a nonprofit research institution or life science commercial entity who is appointed as a member, may from time to time delegate those duties to an executive officer of the entity or to the dean of the medical school, if applicable.

(3) The Governor, the Lieutenant Governor, the Treasurer, and the Controller shall appoint members from among California representatives of California regional, state, or national disease advocacy groups, as follows:

(A) The Governor shall appoint two members, one from each of the following disease advocacy groups: spinal cord injury and Alzheimer's disease.

(B) The Lieutenant Governor shall appoint two members, one from each of the following disease advocacy groups: type II diabetes and multiple sclerosis or amyotrophic lateral sclerosis.

(C) The Treasurer shall appoint two members, one from each of the following disease groups: type I diabetes and heart disease.

(D) The Controller shall appoint two members, one from each of the following disease groups: cancer and Parkinson's disease.

(4) The Speaker of the Assembly shall appoint a member from among California representatives of a California regional, state, or national mental health disease advocacy group.

(5) The President pro Tempore of the Senate shall appoint a member from among California representatives of a California regional, state, or national HIV/AIDS disease advocacy group.

(6) A chairperson and vice chairperson who shall be elected by the ICOC members. Within 40 days of the effective date of this act, each constitutional officer shall nominate a candidate for chairperson and another candidate for vice chairperson. The chairperson and vice chairperson shall each be elected for a term of six years. The chairperson and vice chairperson of ICOC shall be full or part time employees of the institute and shall meet the following criteria:

(A) Mandatory Chairperson Criteria

(i) Documented history in successful stem cell research advocacy.

(ii) Experience with state and federal legislative processes that must include some experience with medical legislative approvals of standards and/or funding.

(iii) Qualified for appointment pursuant to paragraph (3), (4), or (5) of subdivision (a).

(iv) Cannot be concurrently employed by or on leave from any prospective grant or loan recipient institutions in California.

(B) Additional Criteria for Consideration:

(i) Experience with governmental agencies or institutions (either executive or board position).

(ii) Experience with the process of establishing government standards and procedures.

(iii) Legal experience with the legal review of proper governmental authority for the exercise of government agency or government institutional powers.

(iv) Direct knowledge and experience in bond financing.

The vice chairperson shall satisfy clauses (i), (iii), and (iv) of subparagraph (A). The vice chairperson shall be selected from among individuals who have

attributes and experience complementary to those of the chairperson, preferably covering the criteria not represented by the chairperson's credentials and experience.

(b) Appointment of ICOC Members

(1) All appointments shall be made within 40 days of the effective date of this act. In the event that any of the appointments are not completed within the permitted timeframe, the ICOC shall proceed to operate with the appointments that are in place, provided that at least 60 percent of the appointments have been made.

(2) Forty-five days after the effective date of the measure adding this chapter, the State Controller and the Treasurer, or if only one is available within 45 days, the other shall convene a meeting of the appointed members of the ICOC to elect a chairperson and vice chairperson from among the individuals nominated by the constitutional officers pursuant to paragraph (6) of subdivision (a).

(c) ICOC Member Terms of Office

(1) The members appointed pursuant to paragraphs (1), (3), (4), and (5) of subdivision (a) shall serve eight-year terms, and all other members shall serve six-year terms. Members shall serve a maximum of two terms.

(2) If a vacancy occurs within a term, the appointing authority shall appoint a replacement member within 30 days to serve the remainder of the term.

(3) When a term expires, the appointing authority shall appoint a member within 30 days. ICOC members shall continue to serve until their replacements are appointed.

125290.25. Majority Vote of Quorum

Actions of the ICOC may be taken only by a majority vote of a quorum of the ICOC.

125290.30. Public and Financial Accountability Standards

(a) Annual Public Report

The institute shall issue an annual report to the public which sets forth its activities, grants awarded, grants in progress, research accomplishments, and future program directions. Each annual report shall include, but not be limited to, the following: the number and dollar amounts of research and facilities grants; the grantees for the prior year; the institute's administrative expenses; an assessment of the availability of funding for stem cell research from sources other than the institute; a summary of research findings, including promising new research areas; an assessment of the relationship between the institute's grants and the overall strategy of its research program; and a report of the institute's strategic research and financial plans.

(b) Independent Financial Audit for Review by State Controller

The institute shall annually commission an independent financial audit of its activities from a certified public accounting firm, which shall be provided to the State Controller, who shall review the audit and annually issue a public report of that review.

(c) Citizen's Financial Accountability Oversight Committee

There shall be a Citizen's Financial Accountability Oversight Committee chaired by the State Controller. This committee shall review the annual financial audit, the State Controller's report and evaluation of that audit, and the financial practices of the institute. The State Controller, the State Treasurer, the President pro Tempore of the Senate, the Speaker of the Assembly, and the Chairperson of the ICOC shall each appoint a public member of the committee. Committee members shall have medical backgrounds and knowledge of relevant financial

matters. The committee shall provide recommendations on the institute's financial practices and performance. The State Controller shall provide staff support. The committee shall hold a public meeting, with appropriate notice, and with a formal public comment period. The committee shall evaluate public comments and include appropriate summaries in its annual report. The ICOC shall provide funds for the per diem expenses of the committee members and for publication of the annual report.

(d) Public Meeting Laws

(1) The ICOC shall hold at least two public meetings per year, one of which will be designated as the institute's annual meeting. The ICOC may hold additional meetings as it determines are necessary or appropriate.

(2) The Bagley-Keene Open Meeting Act, Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, shall apply to all meetings of the ICOC, except as otherwise provided in this section. The ICOC shall award all grants, loans, and contracts in public meetings and shall adopt all governance, scientific, medical, and regulatory standards in public meetings.

(3) The ICOC may conduct closed sessions as permitted by the Bagley-Keene Open Meeting Act, under Section 11126 of the Government Code. In addition, the ICOC may conduct closed sessions when it meets to consider or discuss:

(A) Matters involving information relating to patients or medical subjects, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(B) Matters involving confidential intellectual property or work product, whether patentable or not, including, but not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information, which is not patented, which is known only to certain individuals who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know it or use it.

(C) Matters involving prepublication, confidential scientific research or data.

(D) Matters concerning the appointment, employment, performance, compensation, or dismissal of institute officers and employees. Action on compensation of the institute's officers and employees shall only be taken in open session.

(4) The meeting required by paragraph (2) of subdivision (b) of Section 125290.20 shall be deemed to be a special meeting for the purposes of Section 11125.4 of the Government Code.

(e) Public Records

(1) The California Public Records Act, Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7 of Title 1 of the Government Code, shall apply to all records of the institute, except as otherwise provided in this section.

(2) Nothing in this section shall be construed to require disclosure of any records that are any of the following:

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

(B) Records containing or reflecting confidential intellectual property or work product, whether patentable or not, including, but not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information, which is not patented, which

is known only to certain individuals who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know it or use it.

(C) Prepublication scientific working papers or research data.

(f) Competitive Bidding

(1) The institute shall, except as otherwise provided in this section, be governed by the competitive bidding requirements applicable to the University of California, as set forth in Article 1 (commencing with Section 10500) of Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code.

(2) For all institute contracts, the ICOC shall follow the procedures required of the Regents by Article 1 (commencing with Section 10500) of Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code with respect to contracts let by the University of California.

(3) The requirements of this section shall not be applicable to grants or loans approved by the ICOC.

(4) Except as provided in this section, the Public Contract Code shall not apply to contracts let by the institute.

(g) Conflicts of Interest

(1) The Political Reform Act, Title 9 (commencing with Section 81000) of the Government Code, shall apply to the institute and to the ICOC, except as provided in this section and in subdivision (e) of Section 125290.50.

(A) No member of the ICOC shall make, participate in making, or in any way attempt to use his or her official position to influence a decision to approve or award a grant, loan, or contract to his or her employer, but a member may participate in a decision to approve or award a grant, loan, or contract to a nonprofit entity in the same field as his or her employer.

(B) A member of the ICOC may participate in a decision to approve or award a grant, loan, or contract to an entity for the purpose of research involving a disease from which a member or his or her immediate family suffers or in which the member has an interest as a representative of a disease advocacy organization.

(C) The adoption of standards is not a decision subject to this section.

(2) Service as a member of the ICOC by a member of the faculty or administration of any system of the University of California shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the ICOC member as a member of the faculty or administration of any system of the University of California and shall not result in the automatic vacation of either such office. Service as a member of the ICOC by a representative or employee of a disease advocacy organization, a nonprofit academic and research institution, or a life science commercial entity shall not be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the ICOC member as a representative or employee of that organization, institution, or entity.

(3) Section 1090 of the Government Code shall not apply to any grant, loan, or contract made by the ICOC except where both of the following conditions are met:

(A) The grant, loan, or contract directly relates to services to be provided by any member of the ICOC or the entity the member represents or financially benefits the member or the entity he or she represents.

(B) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant loan or contract.

(h) Patent Royalties and License Revenues Paid to the State of California

The ICOC shall establish standards that require that all grants and loan awards be subject to intellectual property agreements that balance the opportunity of the State of California to benefit from the patents, royalties, and licenses that result from basic research, therapy development, and clinical trials with the need to assure that essential medical research is not unreasonably hindered by the intellectual property agreements.

(i) Preference for California Suppliers

The ICOC shall establish standards to ensure that grantees purchase goods and services from California suppliers to the extent reasonably possible, in a good faith effort to achieve a goal of more than 50 percent of such purchases from California suppliers.

125290.35. Medical and Scientific Accountability Standards

(a) Medical Standards

In order to avoid duplication or conflicts in technical standards for scientific and medical research, with alternative state programs, the institute will develop its own scientific and medical standards to carry out the specific controls and intent of the act, notwithstanding subdivision (b) of Section 125300, Sections 125320, 125118, 125118.5, 125119, 125119.3 and 125119.5, or any other current or future state laws or regulations dealing with the study and research of pluripotent stem cells and/or progenitor cells, or other vital research opportunities, except Section 125315. The ICOC, its working committees, and its grantees shall be governed solely by the provisions of this act in the establishment of standards, the award of grants, and the conduct of grants awarded pursuant to this act.

(b) The ICOC shall establish standards as follows:

(1) Informed Consent

Standards for obtaining the informed consent of research donors, patients, or participants, which initially shall be generally based on the standards in place on January 1, 2003, for all research funded by the National Institutes of Health, with modifications to adapt to the mission and objectives of the institute.

(2) Controls on Research Involving Humans

Standards for the review of research involving human subjects which initially shall be generally based on the Institutional Review Board standards promulgated by the National Institutes of Health and in effect on January 1, 2003, with modifications to adapt to the mission and objectives of the institute.

(3) Prohibition on Compensation

Standards prohibiting compensation to research donors or participants, while permitting reimbursement of expenses.

(4) Patient Privacy Laws

Standards to assure compliance with state and federal patient privacy laws.

(5) Limitations on Payments for Cells

Standards limiting payments for the purchase of stem cells or stem cell lines to reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transplantation, or implantation or legal transaction or other administrative costs associated with these medical procedures and specifically including any required payments for medical or scientific technologies, products, or processes for royalties, patent, or licensing fees or other costs for intellectual property.

(6) Time Limits for Obtaining Cells

Standards setting a limit on the time during which cells may be extracted from blastocysts, which shall initially be 8 to 12 days after cell division begins, not counting any time during which the blastocysts and/or cells have been stored frozen.

125290.40. ICOC Functions

The ICOC shall perform the following functions:

(a) Oversee the operations of the institute.

(b) Develop annual and long-term strategic research and financial plans for the institute.

(c) Make final decisions on research standards and grant awards in California.

(d) Ensure the completion of an annual financial audit of the institute's operations.

(e) Issue public reports on the activities of the institute.

(f) Establish policies regarding intellectual property rights arising from research funded by the institute.

(g) Establish rules and guidelines for the operation of the ICOC and its working groups.

(h) Perform all other acts necessary or appropriate in the exercise of its power, authority, and jurisdiction over the institute.

(i) Select members of the working groups.

(j) Adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of this chapter, and to govern the procedures of the ICOC. Except as provided in subdivision (k), these rules and regulations shall be adopted in accordance with the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5, Sections 11371 et seq.).

(k) Notwithstanding the Administrative Procedure Act (APA), and in order to facilitate the immediate commencement of research covered by this chapter, the ICOC may adopt interim regulations without compliance with the procedures set forth in the APA. The interim regulations shall remain in effect for 270 days unless earlier superseded by regulations adopted pursuant to the APA.

(l) Request the issuance of bonds from the California Stem Cell Research and Cures Finance Committee and loans from the Pooled Money Investment Board.

(m) May annually modify its funding and finance programs to optimize the institute's ability to achieve the objective that its activities be revenue-positive for the State of California during its first five years of operation without jeopardizing the progress of its core medical and scientific research program.

(n) Notwithstanding Section 11005 of the Government Code, accept additional revenue and real and personal property, including, but not limited to, gifts, royalties, interest, and appropriations that may be used to supplement annual research grant funding and the operations of the institute.

125290.45. ICOC Operations

(a) Legal Actions and Liability

(1) The institute may sue and be sued.

(2) Based upon ICOC standards, institute grantees shall indemnify or insure and hold the institute harmless against any and all losses, claims, damages, expenses, or liabilities, including attorneys' fees, arising from research conducted by the grantee pursuant to the grant, and/or, in the alternative, grantees shall name the institute as an additional insured and submit proof of such insurance.

(3) Given the scientific, medical, and technical nature of the issues facing the ICOC, and notwithstanding Section 11042 of the Government Code, the institute is authorized to retain outside counsel when the ICOC determines that the institute requires specialized services not provided by the Attorney General's office.

(4) The institute may enter into any contracts or obligations which are authorized or permitted by law.

(b) Personnel

(1) The ICOC shall from time to time determine the total number of authorized employees for the institute, up to a maximum of 50 employees, excluding members of the working groups, who shall not be considered institute employees. The ICOC shall select a chairperson, vice chairperson and president who shall exercise all of the powers delegated to them by the ICOC. The following functions apply to the chairperson, vice chairperson, and president:

(A) The chairperson's primary responsibilities are to manage the ICOC agenda and work flow including all evaluations and approvals of scientific and medical working group grants, loans, facilities, and standards evaluations, and to supervise all annual reports and public accountability requirements; to manage and optimize the institute's bond financing plans and funding cash flow plan; to interface with the California Legislature, the United States Congress, the California health care system, and the California public; to optimize all financial leverage opportunities for the institute; and to lead negotiations for intellectual property agreements, policies, and contract terms. The chairperson shall also serve as a member of the Scientific and Medical Accountability Standards Working Group and the Scientific and Medical Research Facilities Working Group and as an ex-officio member of the Scientific and Medical Research Funding Working Group. The vice chairperson's primary responsibilities are to support the chairperson in all duties and to carry out those duties in the chairperson's absence.

(B) The president's primary responsibilities are to serve as the chief executive of the institute; to recruit the highest scientific and medical talent in the United States to serve the institute on its working groups; to serve the institute on its working groups; to direct ICOC staff and participate in the process of supporting all working group requirements to develop recommendations on grants, loans, facilities, and standards as well as to direct and support the ICOC process of evaluating and acting on those recommendations, the implementation of all decisions on these and general matters of the ICOC; to hire, direct, and manage the staff of the institute; to develop the budgets and cost control programs of the institute; to manage compliance with all rules and regulations on the ICOC, including the performance of all grant recipients; and to manage and execute all intellectual property agreements and any other contracts pertaining to the institute or research it funds.

(2) Each member of the ICOC except, the chairperson, vice chairperson, and president, shall receive a per diem of one hundred dollars ($100) per day (adjusted annually for cost of living) for each day actually spent in the discharge of the member's duties, plus reasonable and necessary travel and other expenses incurred in the performance of the member's duties.

(3) The ICOC shall establish daily consulting rates and expense reimbursement standards for the non-ICOC members of all of its working groups.

(4) Notwithstanding Section 19825 of the Government Code, the ICOC shall set compensation for the chairperson, vice chairperson, and president and other

officers, and for the scientific, medical, technical, and administrative staff of the institute within the range of compensation levels for executive officers and scientific, medical, technical, and administrative staff of medical schools within the University of California system and the nonprofit academic and research institutions described in paragraph (2) of subdivision (a) of Section 125290.20.

125290.50. Scientific and Medical Working Groups-General

(a) The institute shall have, and there is hereby established, three separate scientific and medical working groups as follows:

(1) Scientific and Medical Research Funding Working Group.

(2) Scientific and Medical Accountability Standards Working Group.

(3) Scientific and Medical Research Facilities Working Group.

(b) Working Group Members

Appointments of scientific and medical working group members shall be made by a majority vote of a quorum of the ICOC, within 30 days of the election and appointment of the initial ICOC members. The working group members' terms shall be six years except that, after the first six-year terms, the members' terms will be staggered so that one-third of the members shall be elected for a term that expires two years later, one-third of the members shall be elected for a term that expires four years later, and one-third of the members shall be elected for a term that expires six years later. Subsequent terms are for six years. Working group members may serve a maximum of two consecutive terms.

(c) Working Group Meetings

Each scientific and medical working group shall hold at least four meetings per year, one of which shall be designated as its annual meeting.

(d) Working Group Recommendations to the ICOC

Recommendations of each of the working groups may be forwarded to the ICOC only by a vote of a majority of a quorum of the members of each working group. If 35 percent of the members of any working group join together in a minority position, a minority report may be submitted to the ICOC. The ICOC shall consider the recommendations of the working groups in making its decisions on applications for research and facility grants and loan awards and in adopting regulatory standards. Each working group shall recommend to ICOC rules, procedures, and practices for that working group.

(e) Conflict of Interest

(1) The ICOC shall adopt conflict of interest rules, based on standards applicable to members of scientific review committees of the National Institutes of Health, to govern the participation of non-ICOC working group members.

(2) The ICOC shall appoint an ethics officer from among the staff of the institute.

(3) Because the working groups are purely advisory and have no final decisionmaking authority, members of the working groups shall not be considered public officials, employees, or consultants for purposes of the Political Reform Act (Title 9 (commencing with Section 81000) of the Government Code), Sections 1090 and 19990 of the Government Code, and Sections 10516 and 10517 of the Public Contract Code.

(f) Working Group Records

All records of the working groups submitted as part of the working groups' recommendations to the ICOC for approval shall be subject to the Public Records Act. Except as provided in this subdivision, the working groups shall not be subject to the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, or Article 1

(commencing with Section 6250) of Chapter 3.5 of Division 7 of Title 1 of the Government Code.

125290.55. Scientific and Medical Accountability Standards Working Group

(a) Membership

The Scientific and Medical Accountability Standards Working Group shall have 19 members as follows:

(1) Five ICOC members from the 10 groups that focus on disease-specific areas described in paragraphs (3), (4), and (5) of subdivision (a) of Section 125290.20.

(2) Nine scientists and clinicians nationally recognized in the field of pluripotent and progenitor cell research.

(3) Four medical ethicists.

(4) The Chairperson of the ICOC.

(b) Functions

The Scientific and Medical Accountability Standards Working Group shall have the following functions:

(1) To recommend to the ICOC scientific, medical, and ethical standards.

(2) To recommend to the ICOC standards for all medical, socioeconomic, and financial aspects of clinical trials and therapy delivery to patients, including, among others, standards for safe and ethical procedures for obtaining materials and cells for research and clinical efforts for the appropriate treatment of human subjects in medical research consistent with paragraph (2) of subdivision (b) of Section 125290.35, and to ensure compliance with patient privacy laws.

(3) To recommend to the ICOC modification of the standards described in paragraphs (1) and (2) as needed.

(4) To make recommendations to the ICOC on the oversight of funded research to ensure compliance with the standards described in paragraphs (1) and (2).

(5) To advise the ICOC, the Scientific and Medical Research Funding Working Group, and the Scientific and Medical Research Facilities Working Group, on an ongoing basis, on relevant ethical and regulatory issues.

125290.60. Scientific and Medical Research Funding Working Group

(a) Membership

The Scientific and Medical Research Funding Working Group shall have 23 members as follows:

(1) Seven ICOC members from the 10 disease advocacy group members described in paragraphs (3), (4), and (5) of subdivision (a) of Section 125290.20.

(2) Fifteen scientists nationally recognized in the field of stem cell research.

(3) The Chairperson of the ICOC.

(b) Functions

The Scientific and Medical Research Funding Working Group shall perform the following functions:

(1) Recommend to the ICOC interim and final criteria, standards, and requirements for considering funding applications and for awarding research grants and loans.

(2) Recommend to the ICOC standards for the scientific and medical oversight of awards.

(3) Recommend to the ICOC any modifications of the criteria, standards, and requirements described in paragraphs (1) and (2) above as needed.

(4) Review grant and loan applications based on the criteria, requirements, and standards adopted by the ICOC and make recommendations to the ICOC for the award of research, therapy development, and clinical trial grants and loans.

(5) Conduct peer group progress oversight reviews of grantees to ensure compliance with the terms of the award, and report to the ICOC any recommendations for subsequent action.

(6) Recommend to the ICOC standards for the evaluation of grantees to ensure that they comply with all applicable requirements. Such standards shall mandate periodic reporting by grantees and shall authorize the Scientific and Medical Research Funding Working Group to audit a grantee and forward any recommendations for action to the ICOC.

(7) Recommend its first grant awards within 60 days of the issuance of the interim standards.

(c) Recommendations for Awards

Award recommendations shall be based upon a competitive evaluation as follows:

(1) Only the 15 scientist members of the Scientific and Medical Research Funding Working Group shall score grant and loan award applications for scientific merit. Such scoring shall be based on scientific merit in three separate classifications—research, therapy development, and clinical trials, on criteria including the following:

(A) A demonstrated record of achievement in the areas of pluripotent stem cell and progenitor cell biology and medicine, unless the research is determined to be a vital research opportunity.

(B) The quality of the research proposal, the potential for achieving significant research, or clinical results, the timetable for realizing such significant results, the importance of the research objectives, and the innovativeness of the proposed research.

(C) In order to ensure that institute funding does not duplicate or supplant existing funding, a high priority shall be placed on funding pluripotent stem cell and progenitor cell research that cannot, or is unlikely to, receive timely or sufficient federal funding, unencumbered by limitations that would impede the research. In this regard, other research categories funded by the National Institutes of Health shall not be funded by the institute.

(D) Notwithstanding subparagraph (C), other scientific and medical research and technologies and/or any stem cell research proposal not actually funded by the institute under subparagraph (C) may be funded by the institute if at least two-thirds of a quorum of the members of the Scientific and Medical Research Funding Working Group recommend to the ICOC that such a research proposal is a vital research opportunity.

125290.65. Scientific and Medical Facilities Working Group

(a) Membership

The Scientific and Medical Research Facilities Working Group shall have 11 members as follows:

(1) Six members of the Scientific and Medical Research Funding Working Group.

(2) Four real estate specialists. To be eligible to serve on the Scientific and Medical Research Facilities Working Group, a real estate specialist shall be a resident of California, shall be prohibited from receiving compensation from any construction or development entity providing specialized services for medical

research facilities, and shall not provide real estate facilities brokerage services for any applicant for, or any funding by the Scientific and Medical Research Facilities Working Group and shall not receive compensation from any recipient of institute funding grants.

(3) The Chairperson of the ICOC.

(b) Functions

The Scientific and Medical Research Facilities Working Group shall perform the following functions:

(1) Make recommendations to the ICOC on interim and final criteria, requirements, and standards for applications for, and the awarding of, grants and loans for buildings, building leases, and capital equipment; those standards and requirements shall include, among others:

(A) Facility milestones and timetables for achieving such milestones.

(B) Priority for applications that provide for facilities that will be available for research no more than two years after the grant award.

(C) The requirement that all funded facilities and equipment be located solely within California.

(D) The requirement that grantees comply with reimbursable building cost standards, competitive building leasing standards, capital equipment cost standards, and reimbursement standards and terms recommended by the Scientific and Medical Facilities Funding Working Group, and adopted by the ICOC.

(E) The requirement that grantees shall pay all workers employed on construction or modification of the facility funded by facilities grants or loans of the institute, the general prevailing rate of per diem wages for work of a similar character in the locality in which work on the facility is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(F) The requirement that grantees be not-for-profit entities.

(G) The requirement that awards be made on a competitive basis, with the following minimum requirements:

(i) That the grantee secure matching funds from sources other than the institute equal to at least 20 percent of the award. Applications of equivalent merit, as determined by the Scientific and Medical Research Funding Working Group, considering research opportunities to be conducted in the proposed research facility, shall receive priority to the extent that they provide higher matching fund amounts. The Scientific and Medical Research Facilities Working Group may recommend waiving the matching fund requirement in extraordinary cases of high merit or urgency.

(ii) That capital equipment costs and capital equipment loans be allocated when equipment costs can be recovered in part by the grantee from other users of the equipment.

(2) Make recommendations to the ICOC on oversight procedures to ensure grantees' compliance with the terms of an award.

125290.70. Appropriation and Allocation of Funding

(a) Moneys in the California Stem Cell Research and Cures Fund shall be allocated as follows:

(1) (A) No less than 97 percent of the proceeds of the bonds authorized pursuant to Section 125291.30, after allocation of bond proceeds to purposes

described in paragraphs (4) and (5) of subdivision (a) of Section 125291.20, shall be used for grants and grant oversight as provided in this chapter.

(B) Not less than 90 percent of the amount used for grants shall be used for research grants, with no more than the following amounts as stipulated below to be committed during the first 10 years of grant making by the institute, with each year's commitments to be advanced over a period of one to seven years, except that any such funds that are not committed may be carried over to one or more following years. The maximum amount of research funding to be allocated annually as follows: Year 1, 5.6 percent; Year 2, 9.4 percent; Year 3, 9.4 percent; Year 4, 11.3 percent; Year 5, 11.3 percent; Year 6, 11.3 percent; Year 7, 11.3 percent; Year 8, 11.3 percent; Year 9, 11.3 percent; and Year 10, 7.5 percent.

(C) Not more than 3 percent of the proceeds of bonds authorized by Section 125291.30 may be used by the institute for research and research facilities implementation costs, including the development, administration, and oversight of the grant making process and the operations of the working groups.

(2) Not more than 3 percent of the proceeds of the bonds authorized pursuant to Section 125291.30 shall be used for the costs of general administration of the institute.

(3) In any single year any new research funding to any single grantee for any program year is limited to no more than 2 percent of the total bond authorization under this chapter. This limitation shall be considered separately for each new proposal without aggregating any prior year approvals that may fund research activities. This requirement shall be determinative, unless 65 percent of a quorum of the ICOC approves a higher limit for that grantee.

(4) Recognizing the priority of immediately building facilities that ensure the independence of the scientific and medical research of the institute, up to 10 percent of the proceeds of the bonds authorized pursuant to Section 125291.30, net of costs described in paragraphs (2), (4), and (5) of subdivision (a) of Section 125291.20 shall be allocated for grants to build scientific and medical research facilities of nonprofit entities which are intended to be constructed in the first five years.

(5) The institute shall limit indirect costs to 25 percent of a research award, excluding amounts included in a facilities award, except that the indirect cost limitation may be increased by that amount by which the grantee provides matching funds in excess of 20 percent of the grant amount.

(b) To enable the institute to commence operating during the first six months following the adoption of the measure adding this chapter, there is hereby appropriated from the General Fund as a temporary start-up loan to the institute three million dollars ($3,000,000) for initial administrative and implementation costs. All loans to the institute pursuant to this appropriation shall be repaid to the General Fund within 12 months of each loan draw from the proceeds of bonds sold pursuant to Section 125291.30.

(c) The institute's funding schedule is designed to create a positive tax revenue stream for the State of California during the institute's first five calendar years of operations, without drawing funds from the General Fund for principal and interest payments for those first five calendar years.

Article 2. California Stem Cell Research and Cures Bond Act of 2004

125291.10. This article shall be known, and may be cited, as the California Stem Cell Research and Cures Bond Act of 2004.

125291.15. As used in this article, the following terms have the following meaning:

(a) "Act" means the California Stem Cell Research and Cures Bond Act constituting Chapter 3 (commencing with Section 125290.10) of Part 5 of Division 106.

(b) "Board" or "institute" means the California Institute for Regenerative Medicine designated in accordance with subdivision (b) of Section 125291.40.

(c) "Committee" means the California Stem Cell Research and Cures Finance Committee created pursuant to subdivision (a) of Section 125291.40.

(d) "Fund" means the California Stem Cell Research and Cures Fund created pursuant to Section 125291.25.

(e) "Interim debt" means any interim loans pursuant to subdivision (b) of Section 125290.70, and Sections 125291.60 and 125291.65, bond anticipation notes or commercial paper notes issued to make deposits into the fund and which will be paid from the proceeds of bonds issued pursuant to this article.

125291.20. (a) Notwithstanding Section 13340 of the Government Code or any other provision of law, moneys in the fund are appropriated without regard to fiscal years to the institute for the purpose of (1) making grants or loans to fund research and construct facilities for research, all as described in and pursuant to the act, (2) paying general administrative costs of the institute (not to exceed 3 percent of the net proceeds of each sale of bonds), (3) paying the annual administration costs of the interim debt or bonds after December 31 of the fifth full calendar year after this article takes effect, (4) paying the costs of issuing interim debt, paying the annual administration costs of the interim debt until and including December 31 of the fifth full calendar year after this article takes effect, and paying interest on interim debt, if such interim debt is incurred or issued on or prior to December 31 of the fifth full calendar year after this article takes effect, and (5) paying the costs of issuing bonds, paying the annual administration costs of the bonds until and including December 31 of the fifth full calendar year after this article takes effect, and paying interest on bonds that accrues on or prior to December 31 of the fifth full calendar year after this article takes effect (except that such limitation does not apply to premium and accrued interest as provided in Section 125291.70). In addition, moneys in the fund or other proceeds of the sale of bonds authorized by this article may be used to pay principal of or redemption premium on any interim debt issued prior to the issuance of bonds authorized by this article. Moneys deposited in the fund from the proceeds of interim debt may be used to pay general administrative costs of the institute without regard to the 3 percent limit set forth in (2) above, so long as such 3 percent limit is satisfied for each issue of bonds.

(b) Repayment of principal and interest on any loans made by the institute pursuant to this article shall be deposited in the fund and used to make additional grants and loans for the purposes of this act or for paying continuing costs of the annual administration of outstanding bonds.

125291.25. The proceeds of interim debt and bonds issued and sold pursuant to this article shall be deposited in the State Treasury to the credit of the California Stem Cell Research and Cures Fund, which is hereby created in the State Treasury, except to the extent that proceeds of the issuance of bonds are used directly to repay interim debt.

125291.30. Bonds in the total amount of three billion dollars ($3,000,000,000), not including the amount of any refunding bonds issued in accordance with Section 125291.75, or as much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this article and to be used and sold for carrying out the purposes

of Section 125291.20 and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and shall constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both the principal of, and interest on, the bonds as the principal and interest become due and payable.

125291.35. The bonds authorized by this article shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law except Section 16727 apply to the bonds and to this article and are hereby incorporated in this article as though set forth in full in this article.

125291.40. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds and interim debt authorized by this article, the California Stem Cell Research and Cures Finance Committee is hereby created. For purposes of this article, the California Stem Cell Research and Cures Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Treasurer, the Controller, the Director of Finance, the Chairperson of the California Institute for Regenerative Medicine, and two other members of the Independent Citizens Oversight Committee (as created by the act) chosen by the Chairperson of the California Institute for Regenerative Medicine, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the California Institute for Regenerative Medicine is designated the "board."

125291.45. (a) The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this article in order to carry out the actions specified in this article and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time. The bonds may bear interest which is includable in gross income for federal income tax purposes if the committee determines that such treatment is necessary in order to provide funds for the purposes of the act.

(b) The total amount of the bonds authorized by Section 125291.30 which may be issued in any calendar year, commencing in 2005, shall not exceed three hundred fifty million dollars ($350,000,000). If less than this amount of bonds is issued in any year, the remaining permitted amount may be carried over to one or more subsequent years.

(c) An interest-only floating rate bond structure will be implemented for interim debt and bonds until at least December 31 of the fifth full calendar year after this article takes effect, with all interest to be paid from proceeds from the sale of interim debt or bonds, to minimize debt service payable from the General Fund during the initial period of basic research and therapy development, if the committee determines, with the advice of the Treasurer, that this structure will result in the lowest achievable borrowing costs for the state during that five-year period considering the objective of avoiding any bond debt service payments, by the General Fund, during that period. Upon such initial determination, the committee may delegate, by resolution, to the Treasurer such authority in connection with issuance of bonds as it may determine, including,

but not limited to, the authority to implement and continue this bond financing structure (including during any time following the initial five-year period) and to determine that an alternate financing plan would result in significant lower borrowing costs for the state consistent with the objectives related to the General Fund and to implement such alternate financing plan.

125291.50. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds maturing each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

125291.55. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this article, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this article, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 125291.60 appropriated without regard to fiscal years.

125291.60. The Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts, not to exceed the amount of the unsold bonds that have been authorized by the committee, to be sold for the purpose of carrying out this article. Any amount withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from money received from the sale of bonds for the purpose of carrying out this article.

125291.65. The institute may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account in accordance with Section 16312 of the Government Code for the purposes of carrying out this article. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this article. The institute shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the institute in accordance with this article.

125291.70. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

125291.75. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this article includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this article or any previously issued refunding bonds.

125291.80. Notwithstanding any provision of this article or the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this article that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to

designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

125291.85. Inasmuch as the proceeds from the sale of bonds authorized by this article are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

Article 3. Definitions

125292.10. As used in this chapter and in Article XXXV of the California Constitution, the following terms have the following meanings:

(a) "Act" means the California Stem Cell Research and Cures Bond Act constituting Chapter 3 (commencing with Section 125290.10) of Part 5 of Division 106 of the Health and Safety Code.

(b) "Adult stem cell" means an undifferentiated cell found in a differentiated tissue in an adult organism that can renew itself and may, with certain limitations, differentiate to yield all the specialized cell types of the tissue from which it originated.

(c) "Capitalized interest" means interest funded by bond proceeds.

(d) "Committee" means the California Stem Cell Research and Cures Finance Committee created pursuant to subdivision (a) of Section 125291.40.

(e) "Constitutional officers" means the Governor, Lieutenant Governor, Treasurer, and Controller of California.

(f) "Facilities" means buildings, building leases, or capital equipment.

(g) "Floating-rate bonds" means bonds which do not bear a fixed rate of interest until their final maturity date, including commercial paper notes.

(h) "Fund" means the California Stem Cell Research and Disease Cures Fund created pursuant to Section 125291.25.

(i) "Grant" means a grant, loan, or guarantee.

(j) "Grantee" means a recipient of a grant from the institute. All University of California grantee institutions shall be considered as separate and individual grantee institutions.

(k) "Human reproductive cloning" means the practice of creating or attempting to create a human being by transferring the nucleus from a human cell into an egg cell from which the nucleus has been removed for the purpose of implanting the resulting product in a uterus to initiate a pregnancy.

(l) "Indirect costs" mean the recipient's costs in the administration, accounting, general overhead, and general support costs for implementing a grant or loan of the institute. NIH definitions of indirect costs will be utilized as one of the bases by the Scientific and Medical Research Standards Working Group to create a guideline for recipients on this definition, with modifications to reflect guidance by the ICOC and this act.

(m) "Institute" means the California Institute for Regenerative Medicine.

(n) "Interim standards" means temporary standards that perform the same function as "emergency regulations" under the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5, Sections 11371 et

seq.) except that in order to provide greater opportunity for public comment on the permanent regulations, remain in force for 270 days rather than 180 days.

(o) "Life science commercial entity" means a firm or organization, headquartered in California, whose business model includes biomedical or biotechnology product development and commercialization.

(p) "Medical ethicist" means an individual with advanced training in ethics who holds a Ph.D., MA, or equivalent training and who spends or has spent substantial time (1) researching and writing on ethical issues related to medicine, and (2) administering ethical safeguards during the clinical trial process, particularly through service on institutional review boards.

(q) "Pluripotent cells" means cells that are capable of self-renewal, and have broad potential to differentiate into multiple adult cell types. Pluripotent stem cells may be derived from somatic cell nuclear transfer or from surplus products of in vitro fertilization treatments when such products are donated under appropriate informed consent procedures. These excess cells from in vitro fertilization treatments would otherwise be intended to be discarded if not utilized for medical research.

(r) "Progenitor cells" means multipotent or precursor cells that are partially differentiated but retain the ability to divide and give rise to differentiated cells.

(s) "Quorum" means at least 65 percent of the members who are eligible to vote.

(t) "Research donor" means a human who donates biological materials for research purposes after full disclosure and consent.

(u) "Research funding" includes interdisciplinary scientific and medical funding for basic research, therapy development, and the development of pharmacologies and treatments through clinical trials. When a facility's grant or loan has not been provided to house all elements of the research, therapy development, and/or clinical trials, research funding shall include an allowance for a market lease rate of reimbursement for the facility. In all cases, operating costs of the facility, including, but not limited to, library and communication services, utilities, maintenance, janitorial, and security, shall be included as direct research funding costs. Legal costs of the institute incurred in order to negotiate standards with federal and state governments and research institutions; to implement standards or regulations; to resolve disputes; and/or to carry out all other actions necessary to defend and/or advance the institute's mission shall be considered direct research funding costs.

(v) "Research participant" means a human enrolled with full disclosure and consent, and participating in clinical trials.

(w) "Revenue positive" means all state tax revenues generated directly and indirectly by the research and facilities of the institute are greater than the debt service on the state bonds actually paid by the General Fund in the same year.

(x) "Stem cells" mean nonspecialized cells that have the capacity to divide in culture and to differentiate into more mature cells with specialized functions.

(y) "Vital research opportunity" means scientific and medical research and technologies and/or any stem cell research not actually funded by the institute under subparagraph (c) of paragraph (1) of subdivision (c) of Section 125290.60 which provides a substantially superior research opportunity vital to advance medical science as determined by at least a two-thirds vote of a quorum of the members of the Scientific and Medical Research Funding Working Group and recommended as such by that working group to the ICOC. Human reproductive cloning shall not be a vital research opportunity.

SEC. 6. Section 20069 of the Government Code is amended to read:

(a) "State service" means service rendered as an employee or officer (employed, appointed or elected) of the state, *the California Institute for Regenerative Medicine and the officers and employees of its governing body,* the university, a school employer, or a contracting agency, for compensation, and only while he or she is receiving compensation from that employer therefor, except as provided in Article 4 (commencing with Section 20990) of Chapter 11.

(b) "State service," solely for purposes of qualification for benefits and retirement allowances under this system, shall also include service rendered as an officer or employee of a county if the salary for the service constitutes compensation earnable by a member of this system under Section 20638.

SEC. 7. Severability

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 8. Amendments

The statutory provisions of this measure, except the bond provisions, may be amended to enhance the ability of the institute to further the purposes of the grant and loan programs created by the measure, by a bill introduced and passed no earlier than the third full calendar year following adoption, by 70 percent of the membership of both houses of the Legislature and signed by the Governor, provided that at least 14 days prior to passage in each house, copies of the bill in final form shall be made available by the clerk of each house to the public and news media.

INITIATIVE STATUTES

Number on ballot

61. **Children's Hospital Projects. Grant Program. Bond Act.**

[Submitted by the initiative and approved by electors November 2, 2004.]

PROPOSED LAW

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

SECTION 1. Part 6 (commencing with Section 1179.10) is added to Division 1 of the Health and Safety Code, to read:

PART 6. CHILDREN'S HOSPITAL BOND ACT OF 2004

CHAPTER 1. GENERAL PROVISIONS

1179.10. This part shall be known and may be cited as the Children's Hospital Bond Act of 2004.

1179.11. As used in this part, the following terms have the following meanings:

(a) "Authority" means the California Health Facilities Financing Authority established pursuant to Section 15431 of the Government Code.

(b) "Children's hospital" means either:

(1) A University of California general acute care hospital described below:

(A) University of California, Davis Children's Hospital.

(B) Mattel Children's Hospital at University of California, Los Angeles.

(C) University Children's Hospital at University of California, Irvine.

(D) University of California, San Francisco Children's Hospital.

(E) University of California, San Diego Children's Hospital.

(2) A general acute care hospital that is, or is an operating entity of, a California nonprofit corporation incorporated prior to January 1, 2003, whose mission of clinical care, teaching, research, and advocacy focuses on children, and that provides comprehensive pediatric services to a high volume of children eligible for governmental programs and to children with special health care needs eligible for the California Children's Services program and:

(A) Provided at least 160 licensed beds in the categories of pediatric acute, pediatric intensive care and neonatal intensive care in the fiscal year ending between June 30, 2001, and June 29, 2002, as reported to the Office of Statewide Health Planning and Development on or before July 1, 2003.

(B) Provided over 30,000 total pediatric patient (census) days, excluding nursery acute days, in the fiscal year ending between June 30, 2001, and June 29, 2002, as reported to the Office of Statewide Health Planning and Development on or before July 1, 2003.

(C) Provided medical education of at least eight (rounded to the nearest integer) full-time equivalent pediatric or pediatric subspecialty residents in the fiscal year ending between June 30, 2001, and June 29, 2002, as reported to the Office of Statewide Health Planning and Development on or before July 1, 2003.

(c) "Committee" means the Children's Hospital Bond Act Finance Committee created pursuant to Section 1179.32.

(d) "Fund" means the Children's Hospital Fund created pursuant to Section 1179.20.

(e) "Grant" means the distribution of money in the fund by the authority to children's hospitals for projects pursuant to this part.

(f) "Program" means the Children's Hospital Program established pursuant to this part.

(g) "Project" means constructing, expanding, remodeling, renovating, furnishing, equipping, financing, or refinancing of a children's hospital to be financed or refinanced with funds provided in whole or in part pursuant to this part. "Project" may include reimbursement for the costs of constructing, expanding, remodeling, renovating, furnishing, equipping, financing, or refinancing of a children's hospital where such costs are incurred after January 31, 2003. "Project" may include any combination of one or more of the foregoing undertaken jointly by any participating children's hospital that qualifies under this part.

CHAPTER 2. THE CHILDREN'S HOSPITAL PROGRAM

1179.20. The proceeds of bonds issued and sold pursuant to this part shall be deposited in the Children's Hospital Fund, which is hereby created.

1179.21. The purpose of the Children's Hospital Program is to improve the health and welfare of California's critically ill children, by providing a stable and ready source of funds for capital improvement projects for children's hospitals. The program provided for in this part is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the citizens of the state.

1179.22. The authority is authorized to award grants to any children's hospital for purposes of funding projects, as defined in subdivision (g) of Section 1179.11.

1179.23. (a) Twenty percent of the total funds available for grants pursuant to this part shall be awarded to children's hospitals as defined in paragraph (1) of subdivision (b) of Section 1179.11.

(b) Eighty percent of the total funds available for grants pursuant to this part shall be awarded to children's hospitals as defined in paragraph (2) of subdivision (b) of Section 1179.11.

1179.24. (a) The authority shall develop a written application for the awarding of grants under this part within 90 days of the adoption of this act. The authority shall award grants to eligible children's hospitals, subject to the limitations of this part and to further the purposes of this part based on the following factors:

(1) The grant will contribute toward expansion or improvement of health care access by children eligible for governmental health insurance programs and indigent, underserved, and uninsured children.

(2) The grant will contribute toward the improvement of child health care or pediatric patient outcomes.

(3) The children's hospital provides uncompensated or undercompensated care to indigent or public pediatric patients.

(4) The children's hospital provides services to vulnerable pediatric populations.

(5) The children's hospital promotes pediatric teaching or research programs.

(6) Demonstration of project readiness and project feasibility.

(b) An application for funds shall be submitted to the authority for approval as to its conformity with the requirements of this part. The authority shall process and award grants in a timely manner, not to exceed 60 days.

(c) A children's hospital identified in paragraph (1) of subdivision (b) of Section 1179.11 shall not apply for, and the authority shall not award to that children's hospital, a grant that would cause the total amount of grants awarded to that children's hospital to exceed one-fifth of the total funds available for grants to all children's hospitals pursuant to subdivision (a) of Section 1179.23. Notwithstanding this grant limitation, any funds available under subdivision (a) of Section 1179.23 that have not been exhausted by June 30, 2014, shall become available for an application from any children's hospital identified in paragraph (1) of subdivision (b) of Section 1179.11.

(d) A children's hospital identified in paragraph (2) of subdivision (b) of Section 1179.11 shall not apply for, and the authority shall not award to that children's hospital, a grant that would cause the total amount of grants awarded to that children's hospital to exceed seventy-four million dollars ($74,000,000) from funds available for grants to all children's hospitals pursuant to subdivision (b) of Section 1179.23. Notwithstanding this grant limitation, any funds available under subdivision (b) of Section 1179.23 that have not been exhausted by June 30, 2014, shall become available for an application from any children's hospital defined in paragraph (2) of subdivision (b) of Section 1179.11.

(e) In no event shall a grant to finance a project exceed the total cost of the project, as determined by the children's hospital and approved by the authority.

(f) All projects that are awarded grants shall be completed within a reasonable period of time. If the authority determines that the children's hospital has failed to complete the project under the terms specified in awarding the

grant, the authority may require remedies, including the return of all or a portion of the grant. A children's hospital receiving a grant under this part shall submit certification of project completion to the authority.

(g) Grants shall only be available pursuant to this section if the authority determines that it has sufficient money available in the fund. Nothing in this section shall require the authority to award grants if the authority determines that it has insufficient moneys available in the fund to do so.

(h) The authority may annually determine the amount available for purposes of this part. Administrative costs for this program shall not exceed the actual costs or one percent, whichever is less.

1179.25. The Bureau of State Audits may conduct periodic audits to ensure that bond proceeds are awarded in a timely fashion and in a manner consistent with the requirements of this part, and that awardees of bond proceeds are using funds in compliance with applicable provisions of this part.

CHAPTER 3. FISCAL PROVISIONS

1179.30. Bonds in the total amount of seven hundred fifty million dollars ($750,000,000), not including the amount of any refunding bonds, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

1179.31. The bonds authorized by this part shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this part and are hereby incorporated in this part as though set forth in full in this part.

1179.32. (a) Solely for the purpose of authorizing the issuance and sale pursuant to the State General Obligation Bond Law of the bonds authorized by this part, the Children's Hospital Bond Act Finance Committee is hereby created. For purposes of this part, the Children's Hospital Bond Act Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Controller, Director of Finance, and the Treasurer, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) The authority is designated the "board" for purposes of the State General Obligation Bond Law, and shall administer the fund pursuant to this part.

1179.33. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this part in order to carry out the actions specified in Section 1179.21 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds be issued or sold at any one time.

1179.34. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with

any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

1179.35. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated continuously from the General Fund in the State Treasury, for the purposes of this part, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this part, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 1179.36, appropriated without regard to fiscal years.

1179.36. For the purposes of carrying out this part, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this part. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund from proceeds received from the sale of bonds for the purpose of carrying out this part.

1179.37. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

1179.38. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds. These costs shall be shared proportionally by each program funded through this bond act.

1179.39. The authority may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account in accordance with Section 16312 of the Government Code, for purposes of carrying out this part. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this part. The authority shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this part.

1179.40. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this part includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this part or any previously issued refunding bonds.

1179.41. Notwithstanding any other provision of this part, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this part that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment of earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds

and to obtain any other advantage under federal law on behalf of the funds of this state.

1179.42. The people hereby find and declare that, inasmuch as the proceeds from the sale of bonds authorized by this part are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that part.

1179.43. Notwithstanding any other provision of this part, the provisions of this part are severable. If any provision of this part 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.

Number on ballot

63. **Mental Health Services Expansion, Funding. Tax on Personal Incomes Above $1 Million.**

[Submitted by the initiative and approved by electors November 2, 2004.]

PROPOSED LAW

MENTAL HEALTH SERVICES ACT

SECTION 1. Title.

This act shall be known and may be cited as the "Mental Health Services Act."

SEC. 2. Findings and Declarations.

The people of the State of California hereby find and declare all of the following:

(a) Mental illnesses are extremely common; they affect almost every family in California. They affect people from every background and occur at any age. In any year, between 5 percent and 7 percent of adults have a serious mental illness as do a similar percentage of children—between 5 percent and 9 percent. Therefore, more than two million children, adults and seniors in California are affected by a potentially disabling mental illness every year. People who become disabled by mental illness deserve the same guarantee of care already extended to those who face other kinds of disabilities.

(b) Failure to provide timely treatment can destroy individuals and families. No parent should have to give up custody of a child and no adult or senior should have to become disabled or homeless to get mental health services as too often happens now. No individual or family should have to suffer inadequate or insufficient treatment due to language or cultural barriers to care. Lives can be devastated and families can be financially ruined by the costs of care. Yet, for too many Californians with mental illness, the mental health services and supports they need remain fragmented, disconnected and often inadequate, frustrating the opportunity for recovery.

(c) Untreated mental illness is the leading cause of disability and suicide and imposes high costs on state and local government. Many people left untreated or with insufficient care see their mental illness worsen. Children left untreated often become unable to learn or participate in a normal school environment. Adults lose their ability to work and be independent; many become homeless and are subject to frequent hospitalizations or jail. State and county governments are forced to pay billions of dollars each year in emergency medical care, long-term

nursing home care, unemployment, housing, and law enforcement, including juvenile justice, jail and prison costs.

(d) In a cost cutting move 30 years ago, California drastically cut back its services in state hospitals for people with severe mental illness. Thousands ended up on the streets homeless and incapable of caring for themselves. Today thousands of suffering people remain on our streets because they are afflicted with untreated severe mental illness. We can and should offer these people the care they need to lead more productive lives.

(e) With effective treatment and support, recovery from mental illness is feasible for most people. The State of California has developed effective models of providing services to children, adults and seniors with serious mental illness. A recent innovative approach, begun under Assembly Bill 34 in 1999, was recognized in 2003 as a model program by the President's Commission on Mental Health. This program combines prevention services with a full range of integrated services to treat the whole person, with the goal of self-sufficiency for those who may have otherwise faced homelessness or dependence on the state for years to come. Other innovations address services to other underserved populations such as traumatized youth and isolated seniors. These successful programs, including prevention, emphasize client-centered, family focused and community-based services that are culturally and linguistically competent and are provided in an integrated services system.

(f) By expanding programs that have demonstrated their effectiveness, California can save lives and money. Early diagnosis and adequate treatment provided in an integrated service system is very effective; and by preventing disability, it also saves money. Cutting mental health services wastes lives and costs more. California can do a better job saving lives and saving money by making a firm commitment to providing timely, adequate mental health services.

(g) To provide an equitable way to fund these expanded services while protecting other vital state services from being cut, very high-income individuals should pay an additional 1 percent of that portion of their annual income that exceeds one million dollars ($1,000,000). About one-tenth of 1 percent of Californians have incomes in excess of one million dollars ($1,000,000). They have an average pre-tax income of nearly five million dollars ($5,000,000). The additional tax paid pursuant to this represents only a small fraction of the amount of tax reduction they are realizing through recent changes in the federal income tax law and only a small portion of what they save on property taxes by living in California as compared to the property taxes they would be paying on multi-million dollar homes in other states.

SEC. 3. Purpose and Intent.

The people of the State of California hereby declare their purpose and intent in enacting this act to be as follows:

(a) To define serious mental illness among children, adults and seniors as a condition deserving priority attention, including prevention and early intervention services and medical and supportive care.

(b) To reduce the long-term adverse impact on individuals, families and state and local budgets resulting from untreated serious mental illness.

(c) To expand the kinds of successful, innovative service programs for children, adults and seniors begun in California, including culturally and linguistically competent approaches for underserved populations. These programs have already demonstrated their effectiveness in providing outreach and integrated services, including medically necessary psychiatric services,

and other services, to individuals most severely affected by or at risk of serious mental illness.

(d) To provide state and local funds to adequately meet the needs of all children and adults who can be identified and enrolled in programs under this measure. State funds shall be available to provide services that are not already covered by federally sponsored programs or by individuals' or families' insurance programs.

(e) To ensure that all funds are expended in the most cost effective manner and services are provided in accordance with recommended best practices subject to local and state oversight to ensure accountability to taxpayers and to the public.

SEC. 4. Part 3.6 (commencing with Section 5840) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 3.6. PREVENTION AND EARLY INTERVENTION PROGRAMS

5840. (a) The State Department of Mental Health shall establish a program designed to prevent mental illnesses from becoming severe and disabling. The program shall emphasize improving timely access to services for underserved populations.

(b) The program shall include the following components:

(1) Outreach to families, employers, primary care health care providers, and others to recognize the early signs of potentially severe and disabling mental illnesses.

(2) Access and linkage to medically necessary care provided by county mental health programs for children with severe mental illness, as defined in Section 5600.3, and for adults and seniors with severe mental illness, as defined in Section 5600.3, as early in the onset of these conditions as practicable.

(3) Reduction in stigma associated with either being diagnosed with a mental illness or seeking mental health services.

(4) Reduction in discrimination against people with mental illness.

(c) The program shall include mental health services similar to those provided under other programs effective in preventing mental illnesses from becoming severe, and shall also include components similar to programs that have been successful in reducing the duration of untreated severe mental illnesses and assisting people in quickly regaining productive lives.

(d) The program shall emphasize strategies to reduce the following negative outcomes that may result from untreated mental illness:

(1) Suicide.

(2) Incarcerations.

(3) School failure or dropout.

(4) Unemployment.

(5) Prolonged suffering.

(6) Homelessness.

(7) Removal of children from their homes.

(e) In consultation with mental health stakeholders, the department shall revise the program elements in Section 5840 applicable to all county mental health programs in future years to reflect what is learned about the most effective prevention and intervention programs for children, adults, and seniors.

5840.2. (a) The department shall contract for the provision of services pursuant to this part with each county mental health program in the manner set forth in Section 5897.

SEC. 5. Article 11 (commencing with Section 5878.1) is added to Chapter 1 of Part 4 of Division 5 of the Welfare and Institutions Code, to read:

Article 11. Services for Children with Severe Mental Illness

5878.1. (a) It is the intent of this article to establish programs that assure services will be provided to severely mentally ill children as defined in Section 5878.2 and that they be part of the children's system of care established pursuant to this part. It is the intent of this act that services provided under this chapter to severely mentally ill children are accountable, developed in partnership with youth and their families, culturally competent, and individualized to the strengths and needs of each child and their family.

(b) Nothing in this act shall be construed to authorize any services to be provided to a minor without the consent of the child's parent or legal guardian beyond those already authorized by existing statute.

5878.2. For purposes of this article, severely mentally ill children means minors under the age of 18 who meet the criteria set forth in subdivision (a) of Section 5600.3.

5878.3. (a) Subject to the availability of funds as determined pursuant to Part 4.5 (commencing with Section 5890) of this division, county mental health programs shall offer services to severely mentally ill children for whom services under any other public or private insurance or other mental health or entitlement program is inadequate or unavailable. Other entitlement programs include but are not limited to mental health services available pursuant to Medi-Cal, child welfare, and special education programs. The funding shall cover only those portions of care that cannot be paid for with public or private insurance, other mental health funds or other entitlement programs.

(b) Funding shall be at sufficient levels to ensure that counties can provide each child served all of the necessary services set forth in the applicable treatment plan developed in accordance with this part, including services where appropriate and necessary to prevent an out of home placement, such as services pursuant to Chapter 4 (commencing with Section 18250) of Part 6 of Division 9.

(c) The State Department of Mental Health shall contract with county mental health programs for the provision of services under this article in the manner set forth in Section 5897.

SEC. 6. Section 18257 is added to the Welfare and Institutions Code, to read:

18257. (a) The State Department of Social Services shall seek applicable federal approval to make the maximum number of children being served through such programs eligible for federal financial participation and amend any applicable state regulations to the extent necessary to eliminate any limitations on the numbers of children who can participate in these programs.

(b) Funds from the Mental Health Services Fund shall be made available to the State Department of Social Services for technical assistance to counties in establishing and administering projects. Funding shall include reasonable and necessary administrative costs in establishing and administering a project pursuant to this chapter and shall be sufficient to create an incentive for all counties to seek to establish programs pursuant to this chapter.

SEC. 7. Section 5813.5 is added to the Welfare and Institutions Code, to read:

5813.5. Subject to the availability of funds from the Mental Health Services Fund, the State Department of Mental Health shall distribute funds for the provision of services under Sections 5801, 5802 and 5806 to county mental

health programs. Services shall be available to adults and seniors with severe illnesses who meet the eligibility criteria in subdivisions (b) and (c) of Section 5600.3 of the Welfare and Institutions Code. For purposes of this act, seniors means older adult persons identified in Part 3 (commencing with Section 5800) of this division.

(a) Funding shall be provided at sufficient levels to ensure that counties can provide each adult and senior served pursuant to this part with the medically necessary mental health services, medications and supportive services set forth in the applicable treatment plan.

(b) The funding shall only cover the portions of those costs of services that cannot be paid for with other funds including other mental health funds, public and private insurance, and other local, state and federal funds.

(c) Each county mental health programs plan shall provide for services in accordance with the system of care for adults and seniors who meet the eligibility criteria in subdivisions (b) and (c) of Section 5600.3.

(d) Planning for services shall be consistent with the philosophy, principles, and practices of the Recovery Vision for mental health consumers:

(1) To promote concepts key to the recovery for individuals who have mental illness: hope, personal empowerment, respect, social connections, self-responsibility, and self-determination.

(2) To promote consumer-operated services as a way to support recovery.

(3) To reflect the cultural, ethnic and racial diversity of mental health consumers.

(4) To plan for each consumer's individual needs.

(e) The plan for each county mental health program shall indicate, subject to the availability of funds as determined by Part 4.5 (commencing with Section 5890) of this division, and other funds available for mental health services, adults and seniors with a severe mental illness being served by this program are either receiving services from this program or have a mental illness that is not sufficiently severe to require the level of services required of this program.

(f) Each county plan and annual update pursuant to Section 5847 shall consider ways to provide services similar to those established pursuant to the Mentally Ill Offender Crime Reduction Grant Program. Funds shall not be used to pay for persons incarcerated in state prison or parolees from state prisons.

(g) The department shall contract for services with county mental health programs pursuant to Section 5897. After the effective date of this section the term grants referred to in Sections 5814 and 5814.5 shall refer to such contracts.

SEC. 8. Part 3.1 (commencing with Section 5820) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 3.1. HUMAN RESOURCES, EDUCATION, AND TRAINING PROGRAMS

5820. (a) It is the intent of this part to establish a program with dedicated funding to remedy the shortage of qualified individuals to provide services to address severe mental illnesses.

(b) Each county mental health program shall submit to the department a needs assessment identifying its shortages in each professional and other occupational category in order to increase the supply of professional staff and other staff that county mental health programs anticipate they will require in order to provide the increase in services projected to serve additional individuals and families pursuant to Part 3 (commencing with Section 5800),

Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division. For purposes of this part, employment in California's public mental health system includes employment in private organizations providing publicly funded mental health services.

(c) The department shall identify the total statewide needs for each professional and other occupational category and develop a five-year education and training development plan.

(d) Development of the first five-year plan shall commence upon enactment of the initiative. Subsequent plans shall be adopted every five years.

(e) Each five-year plan shall be reviewed and approved by the California Mental Health Planning Council.

5821. (a) The California Mental Health Planning Council shall advise the State Department of Mental Health on education and training policy development and provide oversight for the department's education and training plan development.

(b) The State Department of Mental Health shall work with the California Mental Health Planning Council so that council staff is increased appropriately to fulfill its duties required by Sections 5820 and 5821.

5822. The State Department of Mental Health shall include in the five-year plan:

(a) Expansion plans for the capacity of postsecondary education to meet the needs of identified mental health occupational shortages.

(b) Expansion plans for the forgiveness and scholarship programs offered in return for a commitment to employment in California's public mental health system and make loan forgiveness programs available to current employees of the mental health system who want to obtain Associate of Arts, Bachelor of Arts, master's degrees, or doctoral degrees.

(c) Creation of a stipend program modeled after the federal Title IV-E program for persons enrolled in academic institutions who want to be employed in the mental health system.

(d) Establishment of regional partnerships among the mental health system and the educational system to expand outreach to multicultural communities, increase the diversity of the mental health workforce, to reduce the stigma associated with mental illness, and to promote the use of web-based technologies, and distance learning techniques.

(e) Strategies to recruit high school students for mental health occupations, increasing the prevalence of mental health occupations in high school career development programs such as health science academies, adult schools, and regional occupation centers and programs, and increasing the number of human service academies.

(f) Curriculum to train and retrain staff to provide services in accordance with the provisions and principles of Part 3 (commencing with Section 5800), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division.

(g) Promotion of the employment of mental health consumers and family members in the mental health system.

(h) Promotion of the meaningful inclusion of mental health consumers and family members and incorporating their viewpoint and experiences in the training and education programs in subdivisions (a) through (f).

(i) Promotion of the inclusion of cultural competency in the training and education programs in subdivisions (a) through (f).

SEC. 9. Part 3.2 (commencing with Section 5830) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 3.2. INNOVATIVE PROGRAMS

5830. County mental health programs shall develop plans for innovative programs to be funded pursuant to paragraph (6) of subdivision (a) of Section 5892.

(a) The innovative programs shall have the following purposes:

(1) To increase access to underserved groups.

(2) To increase the quality of services, including better outcomes.

(3) To promote interagency collaboration.

(4) To increase access to services.

(b) County mental health programs shall receive funds for their innovation programs upon approval by the Mental Health Services Oversight and Accountability Commission.

SEC. 10. Part 3.7 (commencing with Section 5845) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 3.7. OVERSIGHT AND ACCOUNTABILITY

5845. (a) The Mental Health Services Oversight and Accountability Commission is hereby established to oversee Part 3 (commencing with Section 5800), the Adult and Older Adult Mental Health System of Care Act; Part 3.1 (commencing with Section 5820), Human Resources, Education, and Training Programs; Part 3.2 (commencing with Section 5830), Innovative Programs; Part 3.6 (commencing with Section 5840), Prevention and Early Intervention Programs; and Part 4 (commencing with Section 5850), the Children's Mental Health Services Act. The commission shall replace the advisory committee established pursuant to Section 5814. The commission shall consist of 16 voting members as follows:

(1) The Attorney General or his or her designee.

(2) The Superintendent of Public Instruction or his or her designee.

(3) The Chairperson of the Senate Health and Human Services Committee or another member of the Senate selected by the President pro Tempore of the Senate.

(4) The Chairperson of the Assembly Health Committee or another member of the Assembly selected by the Speaker of the Assembly.

(5) Two persons with a severe mental illness, a family member of an adult or senior with a severe mental illness, a family member of a child who has or has had a severe mental illness, a physician specializing in alcohol and drug treatment, a mental health professional, a county sheriff, a superintendent of a school district, a representative of a labor organization, a representative of an employer with less than 500 employees and a representative of an employer with more than 500 employees, and a representative of a health care services plan or insurer, all appointed by the Governor. In making appointments, the Governor shall seek individuals who have had personal or family experience with mental illness.

(b) Members shall serve without compensation, but shall be reimbursed for all actual and necessary expenses incurred in the performance of their duties.

(c) The term of each member shall be three years, to be staggered so that approximately one-third of the appointments expire in each year.

(d) In carrying out its duties and responsibilities, the commission may do all of the following:

(1) Meet at least once each quarter at any time and location convenient to the public as it may deem appropriate. All meetings of the commission shall be open to the public.

(2) Within the limit of funds allocated for these purposes, pursuant to the laws and regulations governing state civil service, employ staff, including any clerical, legal, and technical assistance as may appear necessary.

(3) Establish technical advisory committees such as a committee of consumers and family members.

(4) Employ all other appropriate strategies necessary or convenient to enable it to fully and adequately perform its duties and exercise the powers expressly granted, notwithstanding any authority expressly granted to any officer or employee of state government.

(5) Develop strategies to overcome stigma and accomplish all other objectives of Part 3.2 (commencing with Section 5830), 3.6 (commencing with Section 5840), and the other provisions of the act establishing this commission.

(6) At any time, advise the Governor or the Legislature regarding actions the state may take to improve care and services for people with mental illness.

(7) If the commission identifies a critical issue related to the performance of a county mental health program, it may refer the issue to the State Department of Mental Health pursuant to Section 5655.

5846. (a) The commission shall annually review and approve each county mental health program for expenditures pursuant to Part 3.2 (commencing with Section 5830), for innovative programs and Part 3.6 (commencing with Section 5840), for prevention and early intervention.

(b) The department may provide technical assistance to any county mental health plan as needed to address concerns or recommendations of the commission or when local programs could benefit from technical assistance for improvement of their plans submitted pursuant to Section 5847.

(c) The commission shall ensure that the perspective and participation of members and others suffering from severe mental illness and their family members is a significant factor in all of its decisions and recommendations.

5847. Integrated Plans for Prevention, Innovation and System of Care Services.

(a) Each county mental health program shall prepare and submit a three-year plan which shall be updated at least annually and approved by the department after review and comment by the Mental Health Services Oversight and Accountability Commission. The plan and update shall include all of the following:

(1) A program for prevention and early intervention in accordance with Part 3.6 (commencing with Section 5840) of this division.

(2) A program for services to children in accordance with Part 4 (commencing with Section 5850) of this division, to include a program pursuant to Chapter 4 (commencing with Section 18250) of Part 6 of Division 9 or provide substantial evidence that it is not feasible to establish a wraparound program in that county.

(3) A program for services to adults and seniors in accordance with Part 3 (commencing with Section 5800) of this division.

(4) A program for innovations in accordance with Part 3.2 (commencing with Section 5830) of this division.

(5) A program for technological needs and capital facilities needed to provide services pursuant to Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division. All plans for proposed facilities with restrictive settings shall demonstrate that the needs of the people to be served cannot be met in a less restrictive or more integrated setting.

(6) Identification of shortages in personnel to provide services pursuant to the above programs and the additional assistance needed from the education and training programs established pursuant to Part 3.1 (commencing with Section 5820) of this division.

(7) Establishment and maintenance of a prudent reserve to ensure the county program will continue to be able to serve children, adults and seniors that it is currently serving pursuant to Part 3 (commencing with Section 5800) and Part 4 (commencing with Section 5850) of this division, during years in which revenues for the Mental Health Services Fund are below recent averages adjusted by changes in the state population and the California Consumer Price Index.

(b) The department's review and approval of the programs specified in paragraphs (1) and (4) of subdivision (a) shall be limited to ensuring the consistency of such programs with the other portions of the plan and providing review and comment to the Mental Health Services Oversight and Accountability Commission.

(c) The programs established pursuant to paragraphs (2) and (3) of subdivision (a) shall include services to address the needs of transition age youth ages 16 to 25.

(d) Each year the State Department of Mental Health shall inform counties of the amounts of funds available for services to children pursuant to Part 4 (commencing with Section 5850) of this division, and to adults and seniors pursuant to Part 3 (commencing with Section 5800) of this division. Each county mental health program shall prepare expenditure plans pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, and updates to the plans developed pursuant to this section. Each expenditure update shall indicate the number of children, adults and seniors to be served pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, and the cost per person. The expenditure update shall include utilization of unspent funds allocated in the previous year and the proposed expenditure for the same purpose.

(e) The department shall evaluate each proposed expenditure plan and determine the extent to which each county has the capacity to serve the proposed number of children, adults and seniors pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division; the extent to which there is an unmet need to serve that number of children, adults and seniors; and determine the amount of available funds; and provide each county with an allocation from the funds available. The department shall give greater weight for a county or a population which has been significantly underserved for several years.

(f) A county mental health program shall include an allocation of funds from a reserve established pursuant to paragraph (6) of subdivision (a) for services pursuant to paragraphs (2) and (3) of subdivision (a) in years in which the allocation of funds for services pursuant to subdivision (c) are not adequate to continue to serve the same number of individuals as the county had been serving in the previous fiscal year.

5848. (a) Each plan and update shall be developed with local stakeholders including adults and seniors with severe mental illness, families of children, adults and seniors with severe mental illness, providers of services, law enforcement agencies, education, social services agencies and other important interests. A draft plan and update shall be prepared and circulated for review and comment for at least 30 days to representatives of stakeholder interests and any interested party who has requested a copy of such plans.

(b) The mental health board established pursuant to Section 5604 shall conduct a public hearing on the draft plan and annual updates at the close of the 30-day comment period required by subdivision (a). Each adopted plan and update shall include any substantive written recommendations for revisions. The adopted plan or update shall summarize and analyze the recommended revisions. The mental health board shall review the adopted plan or update and make recommendations to the county mental health department for revisions.

(c) The department shall establish requirements for the content of the plans. The plans shall include reports on the achievement of performance outcomes for services pursuant to Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division funded by the Mental Health Services Fund and established by the department.

(d) Mental health services provided pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, shall be included in the review of program performance by the California Mental Health Planning Council required by paragraph (2) of subdivision (c) of Section 5772 and in the local mental health board's review and comment on the performance outcome data required by paragraph (7) of subdivision (a) of Section 5604.2.

SEC. 11. Section 5771.1 is added to the Welfare and Institutions Code, to read:

5771.1. The members of the Mental Health Services Oversight and Accountability Commission established pursuant to Section 5845 are members of the California Mental Health Planning Council. They serve in an ex officio capacity when the council is performing its statutory duties pursuant to Section 5772. Such membership shall not affect the composition requirements for the council specified in Section 5771.

SEC. 12. Section 17043 is added to the Revenue and Taxation Code, to read:

17043. (a) For each taxable year beginning on or after January 1, 2005, in addition to any other taxes imposed by this part, an additional tax shall be imposed at the rate of 1 percent on that portion of a taxpayer's taxable income in excess of one million dollars ($1,000,000).

(b) For purposes of applying Part 10.2 (commencing with Section 18401) of Division 2, the tax imposed under this section shall be treated as if imposed under Section 17041.

(c) The following shall not apply to the tax imposed by this section:

(1) The provisions of Section 17039, relating to the allowance of credits.

(2) The provisions of Section 17041, relating to filing status and recomputation of the income tax brackets.

(3) The provisions of Section 17045, relating to joint returns.

SEC. 13. Section 19602 of the Revenue and Taxation Code is amended to read:

19602. Except for amounts collected or accrued under Sections 17935, 17941, 17948, 19532, and 19561, *and revenues deposited pursuant to Section 19602.5,* all moneys and remittances received by the Franchise Tax Board as amounts imposed under Part 10 (commencing with Section 17001), and related penalties, additions to tax, and interest imposed under this part, shall be deposited, after clearance of remittances, in the State Treasury and credited to the Personal Income Tax Fund.

SEC. 14. Section 19602.5 is added to the Revenue and Taxation Code, to read:

19602.5. (a) There is in the State Treasury the Mental Health Services Fund (MHS Fund). The estimated revenue from the additional tax imposed under Section 17043 for the applicable fiscal year, as determined under subparagraph (B) of paragraph (3) of subdivision (c), shall be deposited to the MHS Fund on a monthly basis, subject to an annual adjustment as described in this section.

(b) (1) Beginning with fiscal year 2004–2005 and for each fiscal year thereafter, the Controller shall deposit on a monthly basis in the MHS Fund an amount equal to the applicable percentage of net personal income tax receipts as defined in paragraph (4).

(2) (A) Except as provided in subparagraph (B), the applicable percentage referred to in paragraph (1) shall be 1.76 percent.

(B) For fiscal year 2004–2005, the applicable percentage shall be 0.70 percent.

(3) Beginning with fiscal year 2006–2007, monthly deposits to the MHS Fund pursuant to this subdivision are subject to suspension pursuant to subdivision (f).

(4) For purposes of this subdivision, "net personal income tax receipts" refers to amounts received by the Franchise Tax Board and the Employment Development Department under the Personal Income Tax Law, as reported by the Franchise Tax Board to the Department of Finance pursuant to law, regulation, procedure, and practice (commonly referred to as the "102 Report") in effect on the effective date of the act establishing this section.

(c) No later than March 1, 2006, and each March 1 thereafter, the Department of Finance, in consultation with the Franchise Tax Board, shall determine the annual adjustment amount for the following fiscal year.

(1) The "annual adjustment amount" for any fiscal year shall be an amount equal to the amount determined by subtracting the "revenue adjustment amount" for the applicable revenue adjustment fiscal year, as determined by the Franchise Tax Board under paragraph (3), from the "tax liability adjustment amount" for applicable tax liability adjustment tax year, as determined by the Franchise Tax Board under paragraph (2).

(2) (A) (i) The "tax liability adjustment amount" for a tax year is equal to the amount determined by subtracting the estimated tax liability increase from the additional tax imposed under Section 17043 for the applicable year under subparagraph (B) from the amount of the actual tax liability increase from the additional tax imposed under Section 17043 for the applicable tax year, based on the returns filed for that tax year.

(ii) For purposes of the determinations required under this paragraph, actual tax liability increase from the additional tax means the increase in tax liability resulting from the tax of 1 percent imposed under Section 17043, as reflected on the original returns filed by October 15 of the year after the close of the applicable tax year.

(iii) The applicable tax year referred to in this paragraph means the 12-calendar month taxable year beginning on January 1 of the year that is two years before the beginning of the fiscal year for which an annual adjustment amount is calculated.

(B) (i) The estimated tax liability increase from the additional tax for the following tax years is:

Tax Year	*Estimated Tax Liability Increase from the Additional Tax*
2005	*$634 million*
2006	*$672 million*
2007	*$713 million*
2008	*$758 million*

(ii) The "estimated tax liability increase from the additional tax" for the tax year beginning in 2009 and each tax year thereafter shall be determined by applying an annual growth rate of 7 percent to the "estimated tax liability increase from additional tax" of the immediately preceding tax year.

(3) (A) The "revenue adjustment amount" is equal to the amount determined by subtracting the "estimated revenue from the additional tax" for the applicable fiscal year, as determined under subparagraph (B), from the actual amount transferred for the applicable fiscal year.

(B) (i) The "estimated revenue from the additional tax" for the following applicable fiscal years is:

Applicable Fiscal Year	*Estimated Revenue from Additional Tax*
2004–05	*$254 million*
2005–06	*$683 million*
2006–07	*$690 million*
2007–08	*$733 million*

(ii) The "estimated revenue from the additional tax" for applicable fiscal year 2007–08 and each applicable fiscal year thereafter shall be determined by applying an annual growth rate of 7 percent to the "estimated revenue from the additional tax" of the immediately preceding applicable fiscal year.

(iii) The applicable fiscal year referred to in this paragraph means the fiscal year that is two years before the fiscal year for which an annual adjustment amount is calculated.

(d) The Department of Finance shall notify the Legislature and the Controller of the results of the determinations required under subdivision (c) no later than 10 business days after the determinations are final.

(e) If the annual adjustment amount for a fiscal year is a positive number, the Controller shall transfer that amount from the General Fund to the MHS Fund on July 1 of that fiscal year.

(f) If the annual adjustment amount for a fiscal year is a negative number, the Controller shall suspend monthly transfers to the MHS Fund for that fiscal year, as otherwise required by paragraph (1) of subdivision (b), until the total amount of suspended deposits for that fiscal year equals the amount of the negative annual adjustment amount for that fiscal year.

SEC. 15. Part 4.5 (commencing with Section 5890) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 4.5. MENTAL HEALTH SERVICES FUND

5890. (a) The Mental Health Services Fund is hereby created in the State Treasury. The fund shall be administered by the State Department of Mental Health. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are continuously appropriated to the department, without regard to fiscal years, for the purpose of funding the following programs and other related activities as designated by other provisions of this division:

(1) Part 3 (commencing with Section 5800), the Adult and Older Adult System of Care Act.

(2) Part 3.6 (commencing with Section 5840), Prevention and Early Intervention Programs.

(3) Part 4 (commencing with Section 5850), the Children's Mental Health Services Act.

(b) Nothing in the establishment of this fund, nor any other provisions of the act establishing it or the programs funded shall be construed to modify the obligation of health care service plans and disability insurance policies to provide coverage for mental health services, including those services required under Section 1374.72 of the Health and Safety Code and Section 10144.5 of the Insurance Code, related to mental health parity. Nothing in this act shall be construed to modify the oversight duties of the Department of Managed Health Care or the duties of the Department of Insurance with respect to enforcing such obligations of plans and insurance policies.

(c) Nothing in this act shall be construed to modify or reduce the existing authority or responsibility of the State Department of Mental Health.

(d) The State Department of Health Services, in consultation with the State Department of Mental Health, shall seek approval of all applicable federal Medicaid approvals to maximize the availability of federal funds and eligibility of participating children, adults and seniors for medically necessary care.

(e) Share of costs for services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, shall be determined in accordance with the Uniform Method for Determining Ability to Pay applicable to other publicly funded mental health services, unless such Uniform Method is replaced by another method of determining co-payments, in which case the new method applicable to other mental health services shall be applicable to services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division.

5891. The funding established pursuant to this act shall be utilized to expand mental health services. These funds shall not be used to supplant existing state or county funds utilized to provide mental health services. The state shall continue to provide financial support for mental health programs with not less than the same entitlements, amounts of allocations from the General Fund and formula distributions of dedicated funds as provided in the last fiscal year which ended prior to the effective date of this act. The state shall not make any change to the structure of financing mental health services, which increases a county's share of costs or financial risk for mental health services unless the state includes adequate funding to fully compensate for such increased costs or financial risk. These funds shall only be used to pay for the programs authorized in Section 5892. These funds may not be used to pay for any other program. These funds may not be loaned to the state General Fund or any other fund of the state, or a

county general fund or any other county fund for any purpose other than those authorized by Section 5892.

5892. (a) In order to promote efficient implementation of this act allocate the following portions of funds available in the Mental Health Services Fund in 2005–06 and each year thereafter:

(1) In 2005–06, 2006–07, and in 2007–08 10 percent shall be placed in a trust fund to be expended for education and training programs pursuant to Part 3.1.

(2) In 2005–06, 2006–07 and in 2007–08 10 percent for capital facilities and technological needs distributed to counties in accordance with a formula developed in consultation with the California Mental Health Directors Association to implement plans developed pursuant to Section 5847.

(3) Twenty percent for prevention and early intervention programs distributed to counties in accordance with a formula developed in consultation with the California Mental Health Directors Association pursuant to Part 3.6 (commencing with Section 5840) of this division. Each county's allocation of funds shall be distributed only after its annual program for expenditure of such funds has been approved by the Mental Health Services Oversight and Accountability Commission established pursuant to Section 5845.

(4) The allocation for prevention and early intervention may be increased in any county which the department determines that such increase will decrease the need and cost for additional services to severely mentally ill persons in that county by an amount at least commensurate with the proposed increase. The statewide allocation for prevention and early intervention may be increased whenever the Mental Health Services Oversight and Accountability Commission determines that all counties are receiving all necessary funds for services to severely mentally ill persons and have established prudent reserves and there are additional revenues available in the fund.

(5) The balance of funds shall be distributed to county mental health programs for services to persons with severe mental illnesses pursuant to Part 4 (commencing with Section 5850), for the children's system of care and Part 3 (commencing with Section 5800), for the adult and older adult system of care.

(6) Five percent of the total funding for each county mental health program for Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division, shall be utilized for innovative programs pursuant to an approved plan required by Section 5830 and such funds may be distributed by the department only after such programs have been approved by the Mental Health Services Oversight and Accountability Commission established pursuant to Section 5845.

(b) In any year after 2007–08, programs for services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division may include funds for technological needs and capital facilities, human resource needs, and a prudent reserve to ensure services do not have to be significantly reduced in years in which revenues are below the average of previous years. The total allocation for purposes authorized by this subdivision shall not exceed 20 percent of the average amount of funds allocated to that county for the previous five years pursuant to this section.

(c) The allocations pursuant to subdivisions (a) and (b) shall include funding for annual planning costs pursuant to Section 5848. The total of such costs shall not exceed 5 percent of the total of annual revenues received for the fund. The planning costs shall include funds for county mental health programs to pay for

the costs of consumers, family members and other stakeholders to participate in the planning process and for the planning and implementation required for private provider contracts to be significantly expanded to provide additional services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division.

(d) Prior to making the allocations pursuant to subdivisions (a), (b) and (c), the department shall also provide funds for the costs for itself, the California Mental Health Planning Council and the Mental Health Services Oversight and Accountability Commission to implement all duties pursuant to the programs set forth in this section. Such costs shall not exceed 5 percent of the total of annual revenues received for the fund. The administrative costs shall include funds to assist consumers and family members to ensure the appropriate state and county agencies give full consideration to concerns about quality, structure of service delivery or access to services. The amounts allocated for administration shall include amounts sufficient to ensure adequate research and evaluation regarding the effectiveness of services being provided and achievement of the outcome measures set forth in Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division.

(e) In 2004–05 funds shall be allocated as follows:

(1) 45 percent for education and training pursuant to Part 3.1 (commencing with Section 5820) of this division.

(2) 45 percent for capital facilities and technology needs in the manner specified by paragraph (2) of subdivision (a).

(3) 5 percent for local planning in the manner specified in subdivision (c) and

(4) 5 percent for state implementation in the manner specified in subdivision (d).

(f) Each county shall place all funds received from the State Mental Health Services Fund in a local Mental Health Services Fund. The Local Mental Health Services Fund balance shall be invested consistent with other county funds and the interest earned on such investments shall be transferred into the fund. The earnings on investment of these funds shall be available for distribution from the fund in future years.

(g) All expenditures for county mental health programs shall be consistent with a currently approved plan or update pursuant to Section 5847.

(h) Other than funds placed in a reserve in accordance with an approved plan, any funds allocated to a county which have not been spent for their authorized purpose within three years shall revert to the state to be deposited into the fund and available for other counties in future years, provided however, that funds for capital facilities, technological needs or education and training may be retained for up to 10 years before reverting to the fund.

(i) If there are still additional revenues available in the fund after the Mental Health Services Oversight and Accountability Commission has determined there are prudent reserves and no unmet needs for any of the programs funded pursuant to this section, including all purposes of the Prevention and Early Intervention Program, the commission shall develop a plan for expenditures of such revenues to further the purposes of this act and the Legislature may appropriate such funds for any purpose consistent with the commission's adopted plan which furthers the purposes of this act.

5893. (a) In any year in which the funds available exceed the amount allocated to counties, such funds shall be carried forward to the next fiscal year to be available for distribution to counties in accordance with Section 5892 in that fiscal year.

(b) All funds deposited into the Mental Health Services Fund shall be invested in the same manner in which other state funds are invested. The fund shall be increased by its share of the amount earned on investments.

5894. In the event that Part 3 (commencing with Section 5800) or Part 4 (commencing with Section 5850) of this division, are restructured by legislation signed into law before the adoption of this measure, the funding provided by this measure shall be distributed in accordance with such legislation; provided, however, that nothing herein shall be construed to reduce the categories of persons entitled to receive services.

5895. In the event any provisions of Part 3 (commencing with Section 5800), or Part 4 (commencing with Section 5850) of this division, are repealed or modified so the purposes of this act cannot be accomplished, the funds in the Mental Health Services Fund shall be administered in accordance with those sections as they read on January 1, 2004.

5897. (a) Notwithstanding any other provision of state law, the State Department of Mental Health shall implement the mental health services provided by Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division through contracts with county mental health programs or counties acting jointly. A contract may be exclusive and may be awarded on a geographic basis. As used herein a county mental health program includes a city receiving funds pursuant to Section 5701.5.

(b) Two or more counties acting jointly may agree to deliver or subcontract for the delivery of such mental health services. The agreement may encompass all or any part of the mental health services provided pursuant to these parts. Any agreement between counties shall delineate each county's responsibilities and fiscal liability.

(c) The department shall implement the provisions of Part 3 (commencing with Section 5800), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division through the annual county mental health services performance contract, as specified in Chapter 2 (commencing with Section 5650) of Part 2 of Division 5.

(d) When a county mental health program is not in compliance with its performance contract, the department may request a plan of correction with a specific timeline to achieve improvements.

(e) Contracts awarded by the State Department of Mental Health, the California Mental Health Planning Council, and the Mental Health Services Oversight and Accountability Commission pursuant to Part 3 (commencing with Section 5800), Part 3.1 (commencing with Section 5820), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), Part 3.7 (commencing with Section 5845), Part 4 (commencing with Section 5850), and Part 4.5 (commencing with Section 5890) of this division, may be awarded in the same manner in which contracts are awarded pursuant to Section 5814 and the provisions of subdivisions (g) and (h) of Section 5814 shall apply to such contracts.

(f) For purposes of Section 5775, the allocation of funds pursuant to Section 5892 which are used to provide services to Medi-Cal beneficiaries shall be included in calculating anticipated county matching funds and the transfer to the department of the anticipated county matching funds needed for community mental health programs.

5898. The department shall develop regulations, as necessary, for the department or designated local agencies to implement this act. In 2005, the director may adopt all regulations pursuant to this act as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purpose of the Administrative Procedure Act, the adoption of regulations, in 2005, shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. These regulations shall not be subject to the review and approval of the Office of Administrative Law and shall not be subject to automatic repeal until final regulations take effect. Emergency regulations adopted in accordance with this provision shall not remain in effect for more than a year. The final regulations shall become effective upon filing with the Secretary of State. Regulations adopted pursuant to this section shall be developed with the maximum feasible opportunity for public participation and comments.

SEC. 16.

The provisions of this act shall become effective January 1 of the year following passage of the act, and its provisions shall be applied prospectively.

The provisions of this act are written with the expectation that it will be enacted in November of 2004. In the event that it is approved by the voters at an election other than one which occurs during the 2004–05 fiscal year, the provisions of this act which refer to fiscal year 2005–06 shall be deemed to refer to the first fiscal year which begins after the effective date of this act and the provisions of this act which refer to other fiscal years shall refer to the year that is the same number of years after the first fiscal year as that year is in relationship to 2005–06.

SEC. 17.

Notwithstanding any other provision of law to the contrary, the department shall begin implementing the provisions of this act immediately upon its effective date and shall have the authority to immediately make any necessary expenditures and to hire staff for that purpose.

SEC. 18.

This act shall be broadly construed to accomplish its purposes. All of the provisions of this act may be amended by a two-thirds vote of the Legislature so long as such amendments are consistent with and further the intent of this act. The Legislature may by majority vote add provisions to clarify procedures and terms including the procedures for the collection of the tax surcharge imposed by Section 12 of this act.

SEC. 19.

If any provision of this act is held to be unconstitutional or invalid for any reason, such unconstitutionality or invalidity shall not affect the validity of any other provision.

Number on ballot

64. **Limits on Private Enforcement of Unfair Business Competition Laws.**

[Submitted by the initiative and approved by electors November 2, 2004.]

PROPOSED LAW

SECTION 1. Findings and Declarations of Purpose

The people of the State of California find and declare that:

(a) This state's unfair competition laws set forth in Sections 17200 and 17500 of the Business and Professions Code are intended to protect California businesses and consumers from unlawful, unfair, and fraudulent business practices.

(b) These unfair competition laws are being misused by some private attorneys who:

(1) File frivolous lawsuits as a means of generating attorney's fees without creating a corresponding public benefit.

(2) File lawsuits where no client has been injured in fact.

(3) File lawsuits for clients who have not used the defendant's product or service, viewed the defendant's advertising, or had any other business dealing with the defendant.

(4) File lawsuits on behalf of the general public without any accountability to the public and without adequate court supervision.

(c) Frivolous unfair competition lawsuits clog our courts and cost taxpayers. Such lawsuits cost California jobs and economic prosperity, threatening the survival of small businesses and forcing businesses to raise their prices or to lay off employees to pay lawsuit settlement costs or to relocate to states that do not permit such lawsuits.

(d) It is the intent of California voters in enacting this act to eliminate frivolous unfair competition lawsuits while protecting the right of individuals to retain an attorney and file an action for relief pursuant to Chapter 5 (commencing with Section 17200) of Division 7 of the Business and Professions Code.

(e) It is the intent of the California voters in enacting this act to prohibit private attorneys from filing lawsuits for unfair competition where they have no client who has been injured in fact under the standing requirements of the United States Constitution.

(f) It is the intent of California voters in enacting this act that only the California Attorney General and local public officials be authorized to file and prosecute actions on behalf of the general public.

(g) It is the intent of California voters in enacting this act that the Attorney General, district attorneys, county counsels, and city attorneys maintain their public protection authority and capability under the unfair competition laws.

(h) It is the intent of California voters in enacting this act to require that civil penalty payments be used by the Attorney General, district attorneys, county counsels, and city attorneys to strengthen the enforcement of California's unfair competition and consumer protection laws.

SEC. 2. Section 17203 of the Business and Professions Code is amended to read:

17203. *Injunctive Relief—Court Orders*

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. *Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.*

SEC. 3. Section 17204 of the Business and Professions Code is amended to read:

17204. *Actions for Injunctions by Attorney General, District Attorney, County Counsel, and City Attorneys*

Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person ~~acting for the interests of itself, its members or the general public~~ *who has suffered injury in fact and has lost money or property as a result of such unfair competition*.

SEC. 4. Section 17206 of the Business and Professions Code is amended to read:

17206. *Civil Penalty for Violation of Chapter*

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) 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, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city, or city and county, having a population in excess of 750,000, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was

entered, and one-half to the State General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. *The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.*

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the state Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the state Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(e) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered *for the exclusive use by the city attorney for the enforcement of consumer protection laws*. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 5. Section 17535 of the Business and Professions Code is amended to read:

17535. *Obtaining Injunctive Relief*

Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person ~~acting for the interests of itself, its members or the~~

~~general public~~ *who has suffered injury in fact and has lost money or property as a result of a violation of this chapter. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of this section and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state*.

SEC. 6. Section 17536 of the Business and Professions Code is amended to read:

17536. *Penalty for Violations of Chapter; Proceedings; Disposition of Proceeds*

(a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) 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 or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer.

If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city. *The aforementioned funds shall be for the exclusive use by the Attorney General, district attorney, county counsel, and city attorney for the enforcement of consumer protection laws.*

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(e) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

SEC. 7. In the event that between July 1, 2003, and the effective date of this measure, legislation is enacted that is inconsistent with this measure, said legislation is void and repealed irrespective of the code in which it appears.

SEC. 8. In the event that this measure and another measure or measures relating to unfair competition law shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure relating to unfair competition law shall be null and void.

SEC. 9. If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

Number on ballot

69. **DNA Samples. Collection. Database. Funding.**

[Submitted by the initiative and approved by electors November 2, 2004.]

PROPOSED LAW

SECTION I. Title

(a) This measure shall be known and referred to as the DNA Fingerprint, Unsolved Crime and Innocence Protection Act.

SEC. II. Findings and Declarations of Purpose

The people of the State of California do hereby find and declare that:

(a) Our communities have a compelling interest in protecting themselves from crime.

(b) There is critical and urgent need to provide law enforcement officers and agencies with the latest scientific technology available for accurately and expeditiously identifying, apprehending, arresting, and convicting criminal offenders and exonerating persons wrongly suspected or accused of crime.

(c) Law enforcement should be able to use the DNA Database and Data Bank Program to substantially reduce the number of unsolved crimes; to help stop serial crime by quickly comparing DNA profiles of qualifying persons and evidence samples with as many investigations and cases as necessary to solve crime and apprehend perpetrators; to exonerate persons wrongly suspected or accused of crime; and to identify human remains.

(d) Expanding the statewide DNA Database and Data Bank Program is:

(1) The most reasonable and certain means to accomplish effective crime solving in California, to aid in the identification of missing and unidentified persons, and to exonerate persons wrongly suspected or accused of crime;

(2) The most reasonable and certain means to solve crime as effectively as other states which have found that the majority of violent criminals have nonviolent criminal prior convictions, and that the majority of cold hits and criminal investigation links are missed if a DNA database or data bank is limited only to violent crimes;

(3) The most reasonable and certain means to rapidly and substantially increase the number of cold hits and criminal investigation links so that serial crime offenders may be identified, apprehended and convicted for crimes they committed in the past and prevented from committing future crimes that would jeopardize public safety and devastate lives; and

(4) The most reasonable and certain means to ensure that California's Database and Data Bank Program is fully compatible with, and a meaningful part of, the nationwide Combined DNA Index System (CODIS).

(e) The state has a compelling interest in the accurate identification of criminal offenders, and DNA testing at the earliest stages of criminal proceedings for felony offenses will help thwart criminal perpetrators from concealing their identities and thus prevent time-consuming and expensive investigations of innocent persons.

(f) The state has a compelling interest in the accurate identification of criminal offenders, and it is reasonable to expect qualifying offenders to provide forensic DNA samples for the limited identification purposes set forth in this chapter.

(g) Expanding the statewide DNA Database and Data Bank Program is the most reasonable and certain means to ensure that persons wrongly suspected or accused of crime are quickly exonerated so that they may reestablish their standing in the community. Moreover, a person whose sample has been collected for Database and Data Bank purposes must be able to seek expungement of his or her profile from the Database and Data Bank.

SEC. III. DNA and Forensic Identification Database and Data Bank Act

SEC. 1. Section 295 of the Penal Code is amended to read:

295. (a) This chapter shall be known and may be cited as the DNA and Forensic Identification ~~Data Base~~ *Database* and Data Bank Act of 1998*, as amended*.

(b) The ~~Legislature finds and declares~~ *people of the State of California set forth* all of the following:

(1) Deoxyribonucleic acid (DNA) and forensic identification analysis is a useful law enforcement tool for identifying and prosecuting ~~sexual and violent offenders~~ *criminal offenders and exonerating the innocent*.

(2) It is the intent of the ~~Legislature~~ *people of the State of California*, in order to further the purposes of this chapter, to require DNA and forensic identification ~~databank~~ *data bank* samples *from all persons, including juveniles,* for the felony *and misdemeanor* offenses described in subdivision (a) of Section 296.

(3) It is necessary to enact this act defining and governing the state's DNA and forensic identification database and ~~databank~~ *data bank* in order to clarify existing law and to enable the state's DNA and ~~forensic identification database and databank program~~ *Forensic Identification Database and Data Bank Program* to become a more effective law enforcement tool.

(c) The purpose of the DNA and ~~forensic identification databank~~ *Forensic Identification Database and Data Bank Program* is to assist federal, state, and local criminal justice and law enforcement agencies within and outside California in the expeditious *and accurate* detection and prosecution of individuals responsible for sex offenses and other ~~violent~~ crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children.

(d) Like the collection of fingerprints, the collection of DNA samples pursuant to this chapter is an administrative requirement to assist in the accurate identification of criminal offenders.

(e) Unless otherwise requested by the Department of Justice, collection of biological samples for DNA analysis from qualifying persons under this chapter is limited to collection of inner cheek cells of the mouth (buccal swab samples).

(f) The Department of Justice DNA Laboratory may obtain through federal, state, or local law enforcement agencies blood specimens from qualifying persons as defined in subdivision (a) of Section 296, and according to procedures set forth in Section 298, when it is determined in the discretion of the Department of Justice that such specimens are necessary in a particular case or would aid the department in obtaining an accurate forensic DNA profile for identification purposes.

~~(d)~~ *(g)* The Department of Justice, through its DNA Laboratory, shall be responsible for the management and administration of the state's ~~DNA database and databank identification program~~ *DNA and Forensic Identification Database and Data Bank Program* and for liaison with the Federal Bureau of Investigation (FBI) regarding the state's participation in a national *or international* DNA database *and data bank program* such as the FBI's Combined DNA Index System (CODIS) that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories nationwide.

~~(e)~~ *(h)* The Department of Justice shall be responsible for implementing this chapter.

(1) The Department of Justice DNA Laboratory, the Department of Corrections, *the Board of Corrections,* and the Department of the Youth Authority ~~shall~~ *may* adopt policies and enact regulations for the implementation of this chapter, as necessary, to give effect to the intent and purpose of this chapter, and to ensure that ~~databank~~ *data bank* blood specimens, ~~saliva~~ *buccal swab* samples, and thumb and palm print impressions *as required by this chapter* are collected from qualifying ~~offenders~~ *persons* in a timely manner, as soon as possible after *arrest,* conviction, or a plea or finding of guilty, no contest, or not guilty by reason of insanity, or upon ~~the~~ *any* disposition rendered in the case of a juvenile who is ~~adjudged a ward of the court~~ *adjudicated* under Section 602 of the Welfare and Institutions Code for commission of any of this chapter's enumerated qualifying offenses, *including attempts,* or when it is determined that a qualifying ~~offender~~ *person* has not given the required *specimens,* samples *or print impressions.* ~~The~~ *Before adopting any policy or regulation implementing this chapter, the* Department of Corrections*, the Board of Corrections,* and the Department of the Youth Authority shall ~~adopt the policies and regulations for implementing this chapter with~~ *seek* advice from and ~~in consultation~~ *consult* with the Department of Justice DNA Laboratory Director.

(2) Given the specificity of this chapter, and except as provided in subdivision (c) of Section 298.1, any administrative bulletins, notices, regulations, policies, procedures, or guidelines adopted by the Department of Justice and its DNA Laboratory, the Department of Corrections, the Department of the Youth Authority, or the Board of Corrections for the purpose of the implementing this chapter are exempt from the provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) The Department of Corrections*, the Board of Corrections,* and the Department of the Youth Authority shall submit copies of *any of* their policies and regulations with respect to this chapter to the Department of Justice DNA Laboratory Director, and ~~periodically~~ *quarterly* shall submit to the director written reports updating the director as to the status of their compliance with this chapter.

(4) On or before April 1 in the year following adoption of the act that added this paragraph, and quarterly thereafter, the Department of Justice DNA Laboratory shall submit a quarterly report to be published electronically on a Department of Justice website and made available for public review. The quarterly report shall state the total number of samples received, the number of samples received from the Department of Corrections, the number of samples fully analyzed for inclusion in the CODIS database, and the number of profiles uploaded into the CODIS database for the reporting period. Each quarterly report shall state the total, annual, and quarterly number of qualifying profiles in the Department of Justice DNA Laboratory data bank both from persons and case evidence, and the number of hits and investigations aided, as reported to the National DNA Index System. The quarterly report shall also confirm the laboratory's accreditation status and participation in CODIS and shall include an accounting of the funds collected, expended, and disbursed pursuant to subdivision (k).

(5) On or before April 1 in the year following adoption of the act that added this paragraph, and quarterly thereafter, the Department of Corrections shall submit a quarterly report to be published electronically on a Department of Corrections website and made available for public review. The quarterly report shall state the total number of inmates housed in state correctional facilities, including a breakdown of those housed in state prisons, camps, community correctional facilities, and other facilities such as prisoner mother facilities. Each quarterly report shall also state the total, annual, and quarterly number of inmates who have yet to provide specimens, samples and print impressions pursuant to this chapter and the number of specimens, samples and print impressions that have yet to be forwarded to the Department of Justice DNA Laboratory within 30 days of collection.

~~(f)~~ *(i)* (1) When the specimens, samples, and print impressions required by this chapter are collected at a county jail or other county ~~detention~~ facility, including a private community correctional facility, the county sheriff or chief administrative officer of the county jail or other ~~detention~~ facility shall be responsible for ensuring all of the following:

(A) The requisite specimens, samples, and print impressions are collected from qualifying ~~offenders~~ *persons immediately following arrest, conviction, or adjudication, or* during the *booking or* intake *or reception center* process at that facility, or reasonably promptly thereafter.

(B) The requisite specimens, samples, and print impressions are collected as soon as administratively practicable after a qualifying ~~offender~~ *person* reports to the facility for the purpose of providing specimens, samples, and print impressions.

(C) The specimens, samples, and print impressions collected pursuant to this chapter are forwarded immediately to the Department of Justice, and in compliance with department policies.

(2) The specimens, samples, and print impressions required by this chapter shall be collected by a person using a collection kit approved by the Department of Justice and in accordance with the requirements and procedures set forth in subdivision (b) of Section 298.

(3) The counties shall be reimbursed for the costs of obtaining specimens, samples, and print impressions subject to the conditions and limitations set forth by the Department of Justice policies governing reimbursement for collecting specimens, samples, and print impressions pursuant to this chapter.

(j) The trial court may order that a portion of the costs assessed pursuant to Section 1203.1c, 1203.1e, or 1203.1m include a reasonable portion of the cost of obtaining specimens, samples, and print impressions in furtherance of this chapter and the funds collected pursuant to this subdivision shall be deposited in the Department of Justice DNA Testing Fund as created by paragraph (2) of subdivision (b) of Section 290.3.

~~(g)~~ *(k)* Any funds appropriated by the Legislature to implement this chapter, including funds *or costs ordered pursuant to subdivision (j)* to reimburse counties, shall be deposited into the Department of Justice DNA Testing Fund as created by paragraph (2) of subdivision (b) of Section 290.3.

~~(h)~~ *(l)* The Department of Justice DNA Laboratory shall be known as the Jan Bashinski DNA Laboratory.

SEC. 2. Section 295.1 of the Penal Code is amended to read:

295.1. (a) The Department of Justice shall perform DNA analysis and other forensic identification analysis pursuant to this chapter only for identification purposes.

(b) The Department of Justice Bureau of Criminal Identification and Information shall perform examinations of palm prints pursuant to this chapter only for identification purposes.

(c) The DNA Laboratory of the Department of Justice shall serve as a repository for blood specimens and ~~saliva~~ *buccal swab* and other biological samples collected, and shall analyze specimens and samples, and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following:

(1) Forensic casework *and forensic unknowns.*

(2) Known and evidentiary specimens and samples from crime scenes or criminal investigations.

(3) Missing or unidentified persons.

(4) ~~Offenders~~ *Persons* required to provide specimens, samples, and print impressions under this chapter.

(5) Legally obtained samples.

~~(5)~~ *(6)* Anonymous DNA records used for training, research, statistical analysis of populations, *quality assurance,* or quality control.

(d) The computerized data bank *and database* of the DNA Laboratory of the Department of Justice shall include files as necessary to implement this chapter.

(e) Nothing in this section shall be construed as requiring the Department of Justice to provide *specimens or* samples for quality control or other purposes to those who request *specimens or* samples.

(f) Submission of samples, specimens, or profiles for the state DNA Database and Data Bank Program shall include information as required by the Department of Justice for ensuring search capabilities and compliance with National DNA Index System (NDIS) standards.

SEC. 3. Section 296 of the Penal Code is amended to read:

296. *(a) The following persons shall provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis:*

~~(a)~~ (1) Any person*, including any juvenile,* who is convicted of *or pleads guilty or no contest to any felony offense* ~~any of the following crimes~~ , or is found not guilty by reason of insanity of any ~~of the following crimes,~~ *felony offense, or any juvenile who is adjudicated under Section 602 of the Welfare and*

Institutions Code for committing any felony offense. ~~shall, regardless of sentence imposed or disposition rendered, be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand for law enforcement identification analysis:~~

~~(A) Any offense or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.~~

~~(B) Murder in violation of Section 187, 190, 190.05, or any degree of murder as set forth in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 of the Penal Code, or any attempt to commit murder.~~

~~(C) Voluntary manslaughter in violation of Section 192 or an attempt to commit voluntary manslaughter.~~

~~(D) Felony spousal abuse in violation of Section 273.5.~~

~~(E) Aggravated sexual assault of a child in violation of Section 269.~~

~~(F) A felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5.~~

~~(G) Kidnapping in violation of subdivisions (a) to (e), inclusive, of Section 207, or Section 208, 209, 209.5, or 210, or an attempt to commit any of these offenses.~~

~~(H) Mayhem in violation of Section 203 or aggravated mayhem in violation of Section 205, or an attempt to commit either of these offenses.~~

~~(I) Torture in violation of Section 206 or an attempt to commit torture.~~

~~(J) Burglary as defined in subdivision (a) of Section 460 or an attempt to commit this offense.~~

~~(K) Robbery as defined in subdivision (a) or (b) of Section 212.5 or an attempt to commit either of these offenses.~~

~~(L) Arson in violation of subdivision (a) or (b) of Section 451 or an attempt to commit either of these offenses.~~

~~(M) Carjacking in violation of Section 215 or an attempt to commit this offense.~~

~~(N) Terrorist activity in violation of Section 11418 or 11419, or a felony violation of Section 11418.5, or an attempt to commit any of these offenses.~~

(2) Any adult person who is arrested for or charged with any of the following felony offenses:

(A) Any felony offense specified in Section 290 or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.

(B) Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter.

(C) Commencing on January 1 of the fifth year following enactment of the act that added this subparagraph, as amended, any adult person arrested or charged with any felony offense.

~~(2)~~ *(3)* Any person*, including any juvenile,* who is required to register under Section 290 *or 457.1* because of the commission of, or the attempt to commit, a felony *or misdemeanor* offense ~~specified in Section 290~~ *, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense* ~~and who is committed to any institution under the jurisdiction of the Department of the Youth Authority where he or she was confined, or is granted probation, or is or was committed to a state hospital as a mentally disordered sex offender under Article 1 (commencing with Section~~

~~6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand to that institution or, in the case of a person granted probation, to a person and at a location within the county designated for testing~~ .

(4) The term "felony" as used in this subdivision includes an attempt to commit the offense.

(5) Nothing in this chapter shall be construed as prohibiting collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense.

(b) The provisions of this chapter and its requirements for submission of specimens, samples and print impressions as soon as administratively practicable shall apply to all qualifying persons regardless of sentence imposed, including any sentence of death, life without the possibility of parole, or any life or indeterminate term, or any other disposition rendered in the case of an adult or juvenile tried as an adult, or whether the person is diverted, fined, or referred for evaluation, and regardless of disposition rendered or placement made in the case of juvenile who is found to have committed any felony offense or is adjudicated under Section 602 of the Welfare and Institutions Code.

~~(b)~~ *(c)* The provisions of this chapter and its requirements for submission ~~to testing~~ *of specimens, samples, and print impressions* as soon as administratively practicable ~~to provide specimens, samples, and print impressions~~ *by qualified persons* as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:

(1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

(3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

~~(c)~~ *(d)* The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the ~~databank~~ *data bank* and database specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, *or any admission* to any of the offenses described in subdivision (a).

~~(d) At sentencing or disposition, the prosecuting attorney shall verify in writing that the requisite samples are required by law, and that they have been taken, or are scheduled to be taken before the offender is released on probation, or other scheduled release. However, a failure by the prosecuting attorney or any other law enforcement agency to verify sample requirement or collection shall not relieve a person of the requirement to provide samples.~~

(e) If at any stage of court proceedings the prosecuting attorney determines that specimens, samples, and print impressions required by this chapter have not already been taken from any person, as defined under subdivision (a) of Section 296, the prosecuting attorney shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples,

and print impressions required by law. However, a failure by the prosecuting attorney or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, and print impressions pursuant to this chapter.

~~(e)~~ *(f) Prior to final disposition or sentencing in the case the court shall inquire and verify that the specimens, samples, and print impressions required by this chapter have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile.* The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter.

However, failure by the court to *verify specimen, sample, and print impression collection or* enter these facts in the abstract of judgment *or dispositional order in the case of a juvenile* shall not invalidate ~~a~~ *an arrest,* plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 4. Section 296.1 of the Penal Code is amended to read:

296.1. *(a) The specimens, samples, and print impressions required by this chapter shall be collected from persons described in subdivision (a) of Section 296 for present and past qualifying offenses of record as follows:*

(1) Collection from any adult person following arrest for a felony offense as specified in subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (a) of Section 296:

(A) Each adult person arrested for a felony offense as specified in subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (a) of Section 296 shall provide the buccal swab samples and thumb and palm print impressions and any blood or other specimens required pursuant to this chapter immediately following arrest, or during the booking or intake or reception center process or as soon as administratively practicable after arrest, but, in any case, prior to release on bail or pending trial or any physical release from confinement or custody.

(B) If the person subject to this chapter did not have specimens, samples, and print impressions taken immediately following arrest or during booking or intake procedures or is released on bail or pending trial or is not confined or incarcerated at the time of sentencing or otherwise bypasses a prison inmate reception center maintained by the Department of Corrections, the court shall order the person to report within five calendar days to a county jail facility or to a city, state, local, private, or other designated facility to provide the required specimens, samples, and print impressions in accordance with subdivision (i) of Section 295.

(2) Collection from persons confined or in custody after conviction or adjudication:

(A) Any person, including any juvenile who is imprisoned or confined or placed in a state correctional institution, a county jail, a facility within the jurisdiction of the Department of the Youth Authority, the Board of Corrections, a residential treatment program, or any state, local, city, private, or other facility after a conviction of any felony or misdemeanor offense, or any adjudication or disposition rendered in the case of a juvenile, whether or not that crime or offense is one set forth in subdivision (a) of Section 296, shall provide buccal swab samples and thumb and palm print impressions and any blood or other specimens required pursuant to this chapter, immediately at intake, or during

the prison reception center process, or as soon as administratively practicable at the appropriate custodial or receiving institution or placed in program if:

(i) The person has a record of any past or present conviction or adjudication as a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296; and

(ii) The person's blood specimens, buccal swab samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory or have not been recorded as part of the department's DNA data bank program.

(3) Collection from persons on probation, parole, or other release:

(A) Any person, including any juvenile, who has a record of any past or present conviction or adjudication for an offense set forth in subdivision (a) of Section 296, and who is on probation or parole for any felony or misdemeanor offense, whether or not that crime or offense is one set forth in subdivision (a) of Section 296, shall provide buccal swab samples and thumb and palm print impressions and any blood specimens required pursuant to this chapter, if:

(i) The person has a record of any past or present conviction or adjudication as a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296; and

(ii) The person's blood specimens, buccal swab samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory or have not been recorded as part of the department's DNA data bank program.

(B) The person shall have any required specimens, samples, and print impressions collected within five calendar days of being notified by the court, or a law enforcement agency or other agency authorized by the Department of Justice. The specimens, samples, and print impressions shall be collected in accordance with subdivision (i) of Section 295 at a county jail facility or a city, state, local, private, or other facility designated for this collection.

(4) Collection from parole violators and others returned to custody:

(A) If a person, including any juvenile, who has been released on parole, furlough, or other release for any offense or crime, whether or not set forth in subdivision (a) of Section 296, is returned to a state correctional or other institution for a violation of a condition of his or her parole, furlough, or other release, or for any other reason, that person shall provide buccal swab samples and thumb and palm print impressions and any blood or other specimens required pursuant to this chapter, at a state correctional or other receiving institution, if:

(i) The person has a record of any past or present conviction or adjudication as a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296; and

(ii) The person's blood specimens, buccal swab samples, and thumb and palm print impressions authorized by this chapter are not in the possession of

the Department of Justice DNA Laboratory or have not been recorded as part of the department's DNA data bank program.

(5) Collection from persons accepted into California from other jurisdictions:

(A) When an offender from another state is accepted into this state under any of the interstate compacts described in Article 3 (commencing with Section 11175) or Article 4 (commencing with Section 11189) of Chapter 2 of Title 1 of Part 4 of this code, or Chapter 4 (commencing with Section 1300) of Part 1 of Division 2 of the Welfare and Institutions Code, or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance is conditional on the offender providing blood specimens, buccal swab samples, and palm and thumb print impressions pursuant to this chapter, if the offender has a record of any past or present conviction or adjudication in California of a qualifying offense described in subdivision (a) of Section 296 or has a record of any past or present conviction or adjudication or had a disposition rendered in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296.

(B) If the person is not confined, the specimens, samples, and print impressions required by this chapter must be provided within five calendar days after the person reports to the supervising agent or within five calendar days of notice to the person, whichever occurs first. The person shall report to a county jail facility in the county where he or she resides or temporarily is located to have the specimens, samples, and print impressions collected pursuant to this chapter. The specimens, samples, and print impressions shall be collected in accordance with subdivision (i) of Section 295.

(C) If the person is confined, he or she shall provide the blood specimens, buccal swab samples, and thumb and palm print impressions required by this chapter as soon as practicable after his or her receipt in a state, county, city, local, private, or other designated facility.

(6) Collection from persons in federal institutions:

(A) Subject to the approval of the Director of the FBI, persons confined or incarcerated in a federal prison or federal institution who have a record of any past or present conviction or juvenile adjudication for a qualifying offense described in subdivision (a) of Section 296, or of a similar crime under the laws of the United States or any other state that would constitute an offense described in subdivision (a) of Section 296, are subject to this chapter and shall provide blood specimens, buccal swab samples, and thumb and palm print impressions pursuant to this chapter if any of the following apply:

(i) The person committed a qualifying offense in California.

(ii) The person was resident of California at the time of the qualifying offense.

(iii) The person has any record of a California conviction for an offense described in subdivision (a) of Section 296, regardless of when the crime was committed.

(iv) The person will be released in California.

(B) The Department of Justice DNA Laboratory shall, upon the request of the United States Department of Justice, forward portions of the specimens or samples, taken pursuant to this chapter, to the United States Department of Justice DNA data bank laboratory. The specimens and samples required by this chapter shall be taken in accordance with the procedures set forth in subdivision (i) of Section 295. The Department of Justice DNA Laboratory is authorized to

analyze and upload specimens and samples collected pursuant to this section upon approval of the Director of the FBI.

(b) Retroactive application of paragraphs (1), (2), (3), (4), (5), and (6) of subdivision (a).

(1) Subdivision (a) and all of its paragraphs shall have retroactive application. Collection shall occur pursuant to paragraphs (1), (2), (3), (4), (5), and (6) of subdivision (a) regardless of when the crime charged or committed became a qualifying offense pursuant to this chapter, and regardless of when the person was convicted of the qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state, or pursuant to the United States Code of Military Justice, 10 U.S.C., Sections 801 and following, or when disposition was rendered in the case of a juvenile who is adjudged a ward of the court for commission of a qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state.

~~(a) Any person, including any juvenile, who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296, and who is granted probation, or serves his or her entire term of confinement in a county jail, or is not sentenced to a term of confinement in a state prison facility, or otherwise bypasses a prison inmate reception center maintained by the Department of Corrections, shall, as soon as administratively practicable, but in any case, prior to physical release from custody, be required to provide two specimens of blood, a saliva sample, and thumb and palm print impressions as set forth in subdivision (a) of Section 296, at a county jail facility or other state, local, or private facility designated for the collection of these specimens, samples, and print impressions, in accordance with subdivision (f) of Section 295.~~

~~If the person subject to this chapter is not incarcerated at the time of sentencing, the court shall order the person to report within five calendar days to a county jail facility or other state, local, or private facility designated for the collection of specimens, samples, and print impressions to provide these specimens, samples, and print impressions in accordance with subdivision (f) of Section 295.~~

~~(b) If a person who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296 is sentenced to serve a term of imprisonment in a state correctional institution, the Director of Corrections shall collect the blood specimens, saliva samples, and thumb and palm print impressions required by this chapter from the person during the intake process at the reception center designated by the director, or as soon as administratively practicable thereafter at a receiving penal institution.~~

~~(c) Any person, including, but not limited to, any juvenile and any person convicted and sentenced to death, life without the possibility of parole, or any life or indeterminate term, who is imprisoned or confined in a state correctional institution, a county jail, a facility within the jurisdiction of the Department of the Youth Authority, or any other state, local, or private facility after a conviction of any crime, or disposition rendered in the case of a juvenile, whether or not that crime or offense is one set forth in subdivision (a) of Section 296, shall provide two specimens of blood, a saliva sample, and thumb and palm print impressions pursuant to this chapter, as soon as administratively practicable once it has been determined that both of the following apply:~~

~~(1) The person has been convicted or adjudicated a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has been convicted or had a disposition rendered in any other court, including~~

any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296.

(2) The person's blood specimens, saliva samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory as part of the DNA data bank program.

This subdivision applies regardless of when the person was convicted of the qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state, or when disposition was rendered in the case of a juvenile who is adjudged a ward of the court for commission of a qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state.

(d) Any person, including any juvenile, who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296, and who is on probation or parole, shall be required to provide two specimens of blood, a saliva sample, and thumb and palm print impressions as required pursuant to this chapter, if it is determined that the person has not previously provided these specimens, samples, and print impressions to law enforcement, or if it is determined that these specimens, samples, and print impressions are not in the possession of the Department of Justice. The person shall have the specimens, samples, and print impressions collected within five calendar days of being notified by a law enforcement agency or other agency authorized by the Department of Justice. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295 at a county jail facility or other state, local, or private facility designated for this collection.

This subdivision shall apply regardless of when the crime committed became a qualifying offense pursuant to this chapter.

(e) When an offender from another state is accepted into this state under any of the interstate compacts described in Article 3 (commencing with Section 11175) or Article 4 (commencing with Section 1189) of Chapter 2 of Title 1 of Part 4 of this code, or Chapter 4 (commencing with Section 1300) of Part 1 of Division 2 of the Welfare and Institutions Code, or under any other reciprocal agreement with any county, state or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance is conditional on the offender providing blood specimens, saliva samples, and palm and thumb print impressions pursuant to this chapter, if the offender was convicted of an offense which would qualify as a crime described in subdivision (a) of Section 296, or if the person was convicted of a similar crime under the laws of the United States or any other state.

If the person is not confined, the specimens, samples, and print impressions required by this chapter must be provided within five calendar days after the offender reports to the supervising agent or within five calendar days of notice to the offender, whichever occurs first. The person shall report to a county jail facility in the county where he or she resides or temporarily is located to have the specimens, samples, and print impressions collected pursuant to this chapter. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295.

If the person is confined, he or she shall provide the blood specimens, saliva samples, and thumb and palm print impressions required by this chapter as soon as practicable after his or her receipt in a state, county, local, private, or other facility.

~~(f) Subject to the approval of the Director of the Federal Bureau of Investigation, persons confined or incarcerated in a federal prison or federal institution located in California who are convicted of a qualifying offense described in subdivision (a) of Section 296 or of a similar crime under the laws of the United States or any other state that would constitute an offense described in subdivision (a) of Section 296, are subject to this chapter and shall provide blood specimens, saliva samples, and thumb and palm print impressions pursuant to this chapter if any of the following apply:~~

~~(1) The person committed a qualifying offense in California.~~

~~(2) The person was a resident of California at the time of the qualifying offense.~~

~~(3) The person has any record of a California conviction for a sex or violent offense described in subdivision (a) of Section 296, regardless of when the crime was committed.~~

~~(4) The person will be released in California.~~

~~Once a federal data bank is established and accessible to the Department of Justice, the Department of Justice DNA Laboratory shall, upon the request of the United States Department of Justice, forward the samples taken pursuant to this chapter, with the exception of those taken from suspects pursuant to subdivision (b) of Section 297, to the United States Department of Justice DNA data bank laboratory. The samples and impressions required by this chapter shall be taken in accordance with the procedures set forth in subdivision (f) of Section 295.~~

~~(g) If a person who is released on parole, furlough, or other release, is returned to a state correctional institution for a violation of a condition of his or her parole, furlough, or other release, and is serving or at any time has served a term of imprisonment for committing an offense described in subdivision (a) of Section 296, and he or she did not provide specimens, samples, and print impressions pursuant to the state's DNA data bank program, the person shall submit to collection of blood specimens, saliva samples, and thumb and palm print impressions at a state correctional institution.~~

~~This subdivision applies regardless of the crime or Penal Code violation for which a person is returned to a state correctional institution and regardless of the date the qualifying offense was committed.~~

SEC. 5. Section 297 of the Penal Code is amended to read:

297. (a) *(1)* The laboratories of the Department of Justice that are accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB) or any certifying body approved by the ASCLD/LAB, and any *law enforcement* crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB, are authorized to analyze crime scene samples and other samples of known and unknown origin and to compare and check the forensic identification profiles, including DNA profiles, of these samples against available DNA and forensic identification data banks and ~~data-bases~~ *databases* in order to establish identity and origin of samples for identification purposes.

(2) Laboratories, including law enforcement laboratories, that are accredited by ASCLD/LAB or any certifying body approved by the ASCLD/LAB that contract with the Department of Justice pursuant to Section 298.3 are authorized to perform anonymous analysis of specimens and samples for forensic identification as provided in this chapter.

~~(b) (1) Except as provided in paragraph (2), a biological sample taken in the course of a criminal investigation, either voluntarily or by court order, from a person who has not been convicted, may only be compared to samples taken from that specific criminal investigation and may not be compared to any other samples from any other criminal investigation without a court order.~~

~~(2) A biological sample obtained from a suspect, as defined in paragraph (3), in a criminal investigation may be analyzed for forensic identification profiles, including DNA profiles so that the profile can be placed in a suspect data base file and searched against the DNA data bank profiles of case evidence. For the purposes of this subdivision, the DNA data bank comparison of suspect and evidence profiles may be made, by the DNA Laboratory of the Department of Justice, or any crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB.~~

~~(3) For the purposes of this subdivision, "a suspect" means a person against whom an information or indictment has been filed for one of the crimes listed in subdivision (a) of Section 296. For the purposes of this subdivision, a person shall remain a suspect for two years from the date of the filing of the information or indictment or until the DNA laboratory receives notification that the person has been acquitted of the charges or the charges were dismissed.~~

(b) (1) A biological sample obtained from a suspect in a criminal investigation for the commission of any crime may be analyzed for forensic identification profiles, including DNA profiles, by the DNA Laboratory of the Department of Justice or any law enforcement crime laboratory accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB and then compared by the Department of Justice in and between as many cases and investigations as necessary, and searched against the forensic identification profiles, including DNA profiles, stored in the files of the Department of Justice DNA data bank or database or any available data banks or databases as part of the Department of Justice DNA Database and Data Bank Program.

(2) The law enforcement investigating agency submitting a specimen, sample, or print impression to the DNA Laboratory of the Department of Justice or law enforcement crime laboratory pursuant to this section shall inform the Department of Justice DNA Laboratory within two years whether the person remains a suspect in a criminal investigation. Upon written notification from a law enforcement agency that a person is no longer a suspect in a criminal investigation, the Department of Justice DNA Laboratory shall remove the suspect sample from its data bank files. However, any identification, warrant, arrest, or prosecution based upon a data bank or database match shall not be invalidated or dismissed due to a failure to purge or delay in purging records.

(c) All laboratories, including the Department of Justice DNA laboratories, contributing DNA profiles for inclusion in California's DNA Data Bank shall be accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB. Additionally, each laboratory shall submit to the Department of Justice for review the annual report required by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB which documents the laboratory's adherence to ASCLD/LAB standards or the standards of any certifying body approved by the ASCLD/LAB. The requirements of this subdivision ~~apply to California laboratories only and~~ do not preclude DNA profiles developed in California from being searched in the National DNA ~~Data Base~~ *Database or Data Bank* (CODIS).

(d) Nothing in this section precludes *local law enforcement DNA* laboratories ~~meeting Technical Working Group on DNA Analysis Methods (TWGDAM) or Scientific Working Group on DNA Analysis Methods (SWGDAM) guidelines or standards promulgated by the DNA Advisory Board as established pursuant to Section 14131 of Title 42 of the United States Code,~~ from *maintaining local forensic databases and data banks or* performing forensic identification analyses, including DNA profiling, ~~independent of~~ *independently from* the Department of Justice DNA and Forensic Identification Data Base and Data Bank ~~program~~ *Program* .

(e) The limitation on the types of offenses set forth in subdivision (a) of Section 296 as subject to the collection and testing procedures of this chapter is for the purpose of facilitating the administration of this chapter *by the Department of Justice, and shall not be considered cause for dismissing an investigation or prosecution or reversing a verdict or disposition* .

(f) The detention, arrest, wardship, *adjudication,* or conviction of a person based upon a data bank match or ~~data base~~ *database* information is not invalidated if it is ~~later~~ determined that the specimens, samples, or print impressions were obtained or placed *or retained* in a data bank or ~~data base~~ *database* by mistake.

SEC. 6. Section 298 of the Penal Code is amended to read:

298. (a) The Director of Corrections, or the Chief Administrative Officer of the detention facility, jail, or other facility at which the blood specimens, ~~saliva~~ *buccal swab* samples, and thumb and palm print impressions were collected shall cause these specimens, samples, and print impressions to be forwarded promptly to the Department of Justice. The specimens, samples, and print impressions shall be collected by a person using a Department of Justice approved collection kit and in accordance with the requirements and procedures set forth in subdivision (b).

(b) (1) The Department of Justice shall provide all blood specimen vials, *buccal swab collectors,* mailing tubes, labels, and instructions for the collection of the blood specimens, ~~saliva~~ *buccal swab* samples, and thumbprints. The specimens, samples, and thumbprints shall thereafter be forwarded to the DNA Laboratory of the Department of Justice for analysis of DNA and other forensic identification markers.

Additionally, the Department of Justice shall provide all full palm print cards, mailing envelopes, and instructions for the collection of full palm prints. The full palm prints, on a form prescribed by the Department of Justice, shall thereafter be forwarded to the Department of Justice for maintenance in a file for identification purposes.

(2) The withdrawal of blood shall be performed in a medically approved manner. Only health care providers trained and certified to draw blood may withdraw the blood specimens for purposes of this section.

(3) Buccal swab samples may be procured by law enforcement or corrections personnel or other individuals trained to assist in buccal swab collection.

~~(3)~~ *(4)* Right thumbprints and a full palm print impression of each hand shall be taken on forms prescribed by the Department of Justice. The palm print forms shall be forwarded to and maintained by the Bureau of Criminal Identification and Information of the Department of Justice. Right thumbprints also shall be taken at the time of the ~~withdrawal~~ *collection* of ~~blood~~ *samples and specimens* and shall be placed on the *sample and specimen containers and* forms *as directed by the Department of Justice* ~~and the blood vial label~~ . The ~~blood vial~~

samples, specimens, and forms ~~and thumbprint forms~~ shall be forwarded to and maintained by the DNA Laboratory of the Department of Justice.

(5) The law enforcement or custodial agency collecting specimens, samples, or print impressions is responsible for confirming that the person qualifies for entry into the Department of Justice DNA Database and Data Bank Program prior to collecting the specimens, samples, or print impressions pursuant to this chapter.

~~(4)~~ *(6)* The DNA Laboratory of the Department of Justice is responsible for establishing procedures for entering data bank and ~~data-base~~ *database* information. ~~The DNA laboratory procedures shall confirm that the offender qualifies for entry into the DNA data bank prior to actual entry of the information in to the DNA data bank.~~

(c) (1) Persons authorized to draw blood *or obtain samples or print impressions* under this chapter for the data bank or ~~data-base~~ *database* shall not be civilly or criminally liable either for withdrawing blood when done in accordance with medically accepted procedures, or for obtaining ~~saliva~~ *buccal swab* samples *by scraping inner cheek cells of the mouth,* or thumb or palm print impressions when performed in accordance with standard professional practices.

(2) There is no civil or criminal cause of action against any law enforcement agency or the Department of Justice, or any employee thereof, for a mistake in *confirming a person's or sample's qualifying status for inclusion within the database or data bank or in* placing an entry in a data bank or a ~~data-base~~ *database* .

(3) The failure of the Department of Justice or local law enforcement to comply with Article 4 or any other provision of this chapter shall not invalidate an arrest, plea, conviction, or disposition.

SEC. 7. Section 298.2 is added to the Penal Code, to read:

298.2. (a) Any person who is required to submit a specimen sample or print impression pursuant to this chapter who engages or attempts to engage in any of the following acts is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years:

(1) Knowingly facilitates the collection of a wrongfully attributed blood specimen, buccal swab sample, or thumb or palm print impression, with the intent that a government agent or employee be deceived as to the origin of a DNA profile or as to any identification information associated with a specimen, sample, or print impression required for submission pursuant to this chapter.

(2) Knowingly tampers with any specimen, sample, print, or the collection container for any specimen or sample, with the intent that any government agent or employee be deceived as to the identity of the person to whom the specimen, sample, or print relates.

SEC. 8. Section 298.3 is added to the Penal Code, to read:

298.3. (a) To ensure expeditious and economical processing of offender specimens and samples for inclusion in the FBI's CODIS System and the state's DNA Database and Data Bank Program, the Department of Justice DNA Laboratory is authorized to contract with other laboratories, whether public or private, including law enforcement laboratories, that have the capability of fully analyzing offender specimens or samples within 60 days of receipt, for the anonymous analysis of specimens and samples for forensic identification testing as provided in this chapter and in accordance with the quality assurance requirement established by CODIS and ASCLD/LAB.

(b) Contingent upon the availability of sufficient funds in the state's DNA Identification Fund established pursuant to Section 76104.6, the Department of Justice DNA Laboratory shall immediately contract with other laboratories, whether public or private, including law enforcement laboratories, for the anonymous analysis of offender reference specimens or samples and any arrestee reference specimens or samples collected pursuant to subdivision (a) of Section 296 for forensic identification testing as provided in subdivision (a) of this section and in accordance with the quality assurance requirements established by CODIS and ASCLD/LAB for any specimens or samples that are not fully analyzed and uploaded into the CODIS database within six months of the receipt of the reference specimens or samples by the Department of Justice DNA Laboratory.

SEC. 9. Section 299 of the Penal Code is amended to read:

299. ~~(a) A person whose DNA profile has been included in the data bank pursuant to this chapter shall have his or her information and materials expunged from the data bank when the underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed, the defendant has been found factually innocent of the underlying offense pursuant to Section 851.8, the defendent has been found not guilty, or the defendant has been acquitted of the underlying offense. The court issuing the reversal, dismissal, or acquittal shall order the expungement and shall send a copy of that order to the Department of Justice DNA Laboratory Director. Upon receipt of the court order, the Department of Justice shall expunge all identifiable information in the data bank and any criminal identification records pertaining to the person.~~

(a) A person whose DNA profile has been included in the data bank pursuant to this chapter shall have his or her DNA specimen and sample destroyed and searchable database profile expunged from the data bank program pursuant to the procedures set forth in subdivision (b) if the person has no past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Data Bank Program and there otherwise is no legal basis for retaining the specimen or sample or searchable profile.

(b) ~~(1) A person whose DNA profile has been included in a data bank pursuant to this chapter~~ *Pursuant to subdivision (a), a person who has no past or present qualifying offense, and for whom there otherwise is no legal basis for retaining the specimen or sample or searchable profile,* may make a written request to ~~*expunge information and materials from the data bank.*~~ *have his or her specimen and sample destroyed and searchable database profile expunged from the data bank program if:*

(1) Following arrest, no accusatory pleading has been filed within the applicable period allowed by law charging the person with a qualifying offense as set forth in subdivision (a) of Section 296 or if the charges which served as the basis for including the DNA profile in the state's DNA Database and Data Bank Identification Program have been dismissed prior to adjudication by a trier of fact;

(2) The underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed;

(3) The person has been found factually innocent of the underlying offense pursuant to Section 851.8, or Section 781.5 of the Welfare and Institutions Code; or

(4) The defendant has been found not guilty or the defendant has been acquitted of the underlying offense.

(c) (1) The person requesting the data bank entry to be expunged must send a copy of his or her request to the trial court *of the county where the arrest occurred, or* that entered the conviction or rendered disposition in the case, to the DNA Laboratory of the Department of Justice, and to the prosecuting attorney of the county in which he or she was *arrested or,* convicted*, or adjudicated* , with proof of service on all parties. The court has the discretion to grant or deny the request for expungement. The denial of a request for expungement is a nonappealable order and shall not be reviewed by petition for writ.

(2) Except as provided below, the Department of Justice shall *destroy a specimen and sample and* expunge *the searchable DNA database profile* ~~all identifiable information in the data bank and any criminal identification records~~ pertaining to the person *who has no present or past qualifying offense of record* upon receipt of a court order that verifies the applicant has made the necessary showing at a noticed hearing, and that includes all of the following:

(A) The written request for expungement pursuant to this section.

(B) A certified copy of the court order reversing and dismissing the conviction *or case* , or a letter from the district attorney certifying that *no accusatory pleading has been filed or the charges which served as the basis for collecting a DNA specimen and sample have been dismissed prior to adjudication by a trier of fact,* the defendant has been found factually innocent, the defendant has been found not guilty, the defendant has been acquitted of the underlying offense, or the underlying conviction has been reversed and the case dismissed.

(C) Proof of written notice to the prosecuting attorney and the Department of Justice that expungement has been requested.

(D) A court order verifying that no retrial or appeal of the case is pending, that it has been at least 180 days since the defendant *or minor has* notified the prosecuting attorney and the Department of Justice of the expungement request, and that the court has not received an objection from the Department of Justice or the prosecuting attorney.

~~(c)~~ *(d)* Upon order from the court, the Department of Justice shall destroy any specimen or sample collected from the person and any ~~criminal identification records~~ *searchable DNA database profile* pertaining to the person, unless the department determines that the person *is subject to the provisions of this chapter because of a past qualifying offense of record or is or* has otherwise become obligated to submit a blood specimen *or buccal swab sample* as a result of a separate *arrest,* conviction, juvenile adjudication, or finding of guilty or not guilty by reason of insanity for an offense described in subdivision (a) of Section 296, or as a condition of a plea.

The Department of Justice is not required to destroy ~~an autoradiograph~~ *analytical data* or other ~~item~~ *items* obtained from a blood specimen *or saliva, or buccal swab sample,* if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed *or otherwise compromised* .

Any identification, warrant, probable cause to arrest, or arrest based upon a data bank *or database* match is not invalidated due to a failure to expunge or a delay in expunging records.

~~(d) The Department of Justice DNA Laboratory shall periodically review its files to determine whether its files contain DNA reference sample profiles from suspects as defined in subdivision (b) of Section 297 who are no longer eligible for inclusion in the data bank. The DNA profiles and samples stored in~~

~~the suspect data base from a person who is a suspect in a criminal investigation shall be purged within two years of the date of the filing of the information or indictment or when the DNA laboratory receives notice that the suspect was acquitted or the charges against the suspect were dismissed, which ever occurs earlier. The notice shall include a certified copy of the court order dismissing the information or indictment, a certified copy of the defendant's fingerprints and the defendant's CII number.~~

(e) Notwithstanding any other provision of law, the Department of Justice DNA Laboratory is not required to expunge DNA profile or forensic identification information or destroy or return specimens, samples, or print impressions taken pursuant to this section if the duty to register under Section 290 or 457.1 is terminated.

(f) Notwithstanding any other provision of law, including Sections 17, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide specimens, samples, or print impressions required by this chapter if a person has been found guilty or was adjudicated a ward of the court by a trier of fact of a qualifying offense as defined in subdivision (a) of Section 296, or was found not guilty by reason of insanity or pleads no contest to a qualifying offense as defined in subdivision (a) of Section 296.

SEC. 10. Section 299.5 of the Penal Code is amended to read:

299.5. (a) All DNA and forensic identification profiles and other identification information retained by the Department of Justice pursuant to this chapter are exempt from any law requiring disclosure of information to the public and shall be confidential except as otherwise provided in this chapter.

(b) All evidence and forensic samples containing biological material retained by the Department of Justice DNA Laboratory or other state law enforcement agency are exempt from any law requiring disclosure of information to the public or the return of biological specimens *, samples, or print impressions* .

(c) Non-DNA forensic identification information may be filed with the offender's file maintained by the Sex Registration Unit of the Department of Justice or in other computerized data bank *or database* systems maintained by the Department of Justice.

(d) The DNA and other forensic identification information retained by the Department of Justice pursuant to this chapter shall not be included in the state summary criminal history information. However, nothing in this chapter precludes law enforcement personnel from entering into a person's criminal history information or offender file maintained by the Department of Justice, the fact that the specimens, samples, and print impressions required by this chapter have or have not been collected from that person.

(e) The fact that the blood specimens, ~~saliva~~ *or buccal swab* samples, and print impressions required by this chapter have been received by the DNA Laboratory of the Department of Justice shall be included in the state summary criminal history information *as soon as administratively practicable* .

The full palm prints of each hand shall be filed and maintained by the Automated Latent Print Section of the Bureau of Criminal Identification and Information of the Department of Justice, and may be included in the state summary criminal history information.

(f) DNA *samples and DNA profiles* and other forensic identification information shall be released only to law enforcement agencies, including, but not limited to, parole officers of the Department of Corrections, hearing officers of the parole authority, probation officers, the Attorney General's office,

district attorneys' offices, and prosecuting city attorneys' offices, ~~or to a court or administrative tribunal, except as specified in~~ *unless otherwise specifically authorized by* this chapter. Dissemination of ~~this information~~ *DNA specimens, samples, and DNA profiles and other forensic identification information* to law enforcement agencies and district attorneys' offices outside this state shall be performed in conformity with the provisions of this chapter.

(g) A defendant's DNA and other forensic identification information developed pursuant to this chapter shall be available to his or her defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(h) Except as provided in subdivision (g) and in order to protect the confidentiality and privacy of database and data bank information, the Department of Justice and local public DNA laboratories shall not otherwise be compelled in a criminal or civil proceeding to provide any DNA profile or forensic identification database or data bank information or its computer database program software or structures to any person or party seeking such records or information whether by subpoena or discovery, or other procedural device or inquiry.

~~(g)~~ *(i)* (1) (A) Any person who knowingly uses an offender *specimen,* sample*,* or DNA profile *collected pursuant to this chapter* for other than criminal identification or exclusion purposes, *or for other than the identification of missing persons,* or who knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes, *or for the identification of missing persons,* in violation of this chapter, shall be punished by imprisonment in a county jail not exceeding one year or by imprisonment in the state prison.

(B) Any person who, for the purpose of financial gain, knowingly uses ~~an offender~~ *a specimen,* sample*,* or DNA profile *collected pursuant to this chapter* for other than criminal identification or exclusion purposes or *for the identification of missing persons or* who, for the purpose of financial gain, knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes *or for other than the identification of missing persons* , in violation of this chapter, shall, in addition to the penalty provided in subparagraph (A), be punished by a criminal fine in an amount three times that of any financial gain received or ten thousand dollars ($10,000), whichever is greater.

(2) (A) If any employee of the Department of Justice knowingly uses ~~an offender~~ *a specimen,* sample*,* or DNA profile *collected pursuant to this chapter* for other than criminal identification or exclusion purposes, or knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes *or for other than the identification of missing persons* , in violation of this chapter, the department shall be liable in civil damages to the donor of the DNA identification information in the amount of five thousand dollars ($5,000) for each violation, plus attorney's fees and costs. In the event of multiple disclosures, the total damages available to the donor of the DNA is limited to fifty thousand dollars ($50,000) plus attorney's fees and costs.

(B) (i) Notwithstanding any other law, this shall be the sole and exclusive remedy against the Department of Justice and its employees available to the donor of the DNA.

(ii) The Department of Justice employee disclosing DNA identification information in violation of this chapter shall be absolutely immune from civil liability under this or any other law.

(3) It is not a violation of this section for a law enforcement agency *in its discretion* to publicly disclose the fact of a DNA profile match *, or the name of the person identified by the DNA match when this match is the basis of law enforcement's investigation, arrest, or prosecution of a particular person, or the identification of a missing or abducted person* .

~~(h)~~ *(j)* It is not a violation of this chapter to furnish DNA or other forensic identification information of the defendant to his or her defense counsel for criminal defense purposes in compliance with discovery.

~~(i)~~ *(k)* It is not a violation of this section *for law enforcement* to release DNA and other forensic identification information developed pursuant to this chapter to a jury or grand jury, or in a document filed with a court or administrative agency, or as part of a judicial or administrative proceeding, or for this information to become part of the public transcript or record of proceedings *when, in the discretion of law enforcement, disclosure is necessary because the DNA information pertains to the basis for law enforcement's identification, arrest, investigation, prosecution, or exclusion of a particular person related to the case* .

~~(j)~~ *(l)* It is not a violation of this section to include information obtained from a file in a transcript or record of a judicial proceeding, or in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

~~(k)~~ *(m)* It is not a violation of this section for the DNA Laboratory of the Department of Justice *, or an organization retained as an agent of the Department of Justice,* or a local public laboratory to use anonymous ~~DNA~~ records *or criminal history information obtained pursuant to this chapter* for training, research, statistical analysis of populations, *or quality assurance* or quality control.

~~(l) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file, the computerized databank system, any of the DNA laboratory's databases, or the full palm print file, provided that the subject of the file is not identified and cannot be identified from the information disclosed. All requests for statistical or research information obtained from the DNA databank shall be cataloged by the Department of Justice. Commencing January 1, 2000, the department shall submit an annual letter to the Legislature including, with respect to each request, the requester's name or agency, the purpose of the request, whether the request is related to a criminal investigation or court proceeding, whether the request was granted or denied, any reasons for denial, costs incurred or estimates of the cost of the request, and the date of the request.~~

~~(m)~~ *(n)* The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community experienced in the use of DNA technology. This material shall be

available to criminal defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

~~(n)~~ *(o)* In order to maintain the computer system security of the Department of Justice DNA and ~~forensic identification database and databank program~~ *Forensic Identification Database and Data Bank Program* , the computer software and database structures used by the DNA Laboratory of the Department of Justice to implement this chapter are confidential.

~~(o) Nothing in this section shall preclude a court from ordering discovery pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.~~

SEC. 11. Section 299.6 of the Penal Code is amended to read:

299.6. (a) Nothing in this chapter shall prohibit *the Department of Justice, in its sole discretion, from* the sharing or disseminating of population ~~data base~~ *database* or data bank information *, DNA profile or forensic identification database or data bank information, analytical data and results generated for forensic identification database and data bank purposes, or protocol and forensic DNA analysis methods and quality assurance or quality control procedures* with any of the following:

(1) Federal, state, or local law enforcement agencies.

(2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.

(3) The attorney general's office of any state.

(4) Any state or federally authorized auditing agent or board that inspects or reviews the work of the Department of Justice DNA Laboratory for the purpose of ensuring that the laboratory meets ASCLD/LAB and FBI standards for accreditation and quality assurance standards necessary under this chapter and for the state's participation in CODIS and other national or international crime-solving networks.

~~(4)~~ *(5)* Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with statistical analyses of ~~the~~ population ~~data base~~ *databases, or the analyses of forensic protocol, research methods, or quality control procedures,* or to assist in the recovery or identification of human remains for humanitarian purposes, including identification of missing persons.

~~(b) Nothing in this chapter shall prohibit the sharing or disseminating of protocol and forensic DNA analysis methods and quality control procedures with any of the following:~~

~~(1) Federal, state, or local law enforcement agencies.~~

~~(2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.~~

~~(3) The attorney general's office of any state.~~

~~(4) Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with analyses of forensic protocol, research methods, or quality control procedures.~~

~~(c)~~ *(b)* The population ~~data base~~ *databases* and data ~~bank~~ *banks* of the DNA Laboratory of the Department of Justice may be made available to and searched by the FBI and any other agency participating in the FBI's CODIS System or any other national *or international* law enforcement *database or* data bank system.

~~(d)~~ *(c)* The Department of Justice may provide portions of ~~the~~ *biological samples including* blood specimens ~~and~~ , saliva *samples, and buccal swab* samples collected pursuant to this chapter to local public *law enforcement* DNA

laboratories for identification purposes provided that the privacy provisions of this section are followed by the local *public law enforcement* laboratory and if each of the following conditions is met:

(1) The procedures used by the local public DNA laboratory for the handling of specimens and samples and the disclosure of results are the same as those established by the Department of Justice pursuant to Sections 297, 298, and 299.5.

(2) The methodologies and procedures used by the local public DNA laboratory for DNA or forensic identification analysis are compatible with those ~~established~~ *used* by the Department of Justice ~~pursuant to subdivision (i) of Section 299.5~~, or otherwise are determined by the Department of Justice to be valid and appropriate for identification purposes.

(3) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the Department of Justice.

(4) All provisions of this section concerning privacy and security are followed.

(5) The local public *law enforcement* DNA laboratory assumes all costs of securing the specimens and samples and provides appropriate tubes, labels, and ~~instructions~~ *materials* necessary to secure the *specimens and* samples.

~~(c)~~ *(d)* Any local DNA laboratory that produces DNA profiles of known reference samples for inclusion within the permanent files of the state's DNA Data Bank program ~~shall comply with and be subject to all of the rules, regulations, and restrictions of this chapter and~~ shall follow the policies of the DNA Laboratory of the Department of Justice.

SEC. 12. Section 300 of the Penal Code is amended to read:

300. Nothing in this chapter shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store, and utilize DNA or forensic identification markers, blood specimens, *buccal swab samples,* saliva samples, or thumb or palm print impressions for identification purposes.

SEC. 13. Section 300.1 of the Penal Code is amended to read:

300.1. *(a)* Nothing in this chapter shall be construed to restrict the authority of *local law enforcement to maintain their own DNA-related databases or data banks, or to restrict* the Department of Justice with respect to data banks and ~~data-bases~~ *databases* created by other statutory authority, including, but not limited to, ~~data-bases~~ *databases* related to fingerprints, firearms and other weapons, child abuse, domestic violence deaths, child deaths, driving offenses, missing persons, violent crime information as described in Title 12 (commencing with Section 14200) of Part 4, and criminal justice statistics permitted by Section 13305.

(b) Nothing in this chapter shall be construed to limit the authority of local or county coroners or their agents, in the course of their scientific investigation, to utilize genetic and DNA technology to inquire into and determine the circumstances, manner, and cause of death, or to employ or use outside laboratories, hospitals, or research institutions that utilize genetic and DNA technology.

SEC. 14. Section 300.2 is added to the Penal Code, to read:

300.2. Any requirement to provide saliva samples pursuant to this chapter shall be construed as a requirement to provide buccal swab samples as of the effective date of the act that added this section. However, the Department of Justice may retain and use previously collected saliva and other biological

samples as part of its database and databank program and for quality control purposes in conformity with the provisions of this chapter.

SEC. IV. Supplemental Funding

SEC. 1. Section 76104.6 is added to the Government Code, to read:

76104.6. (a) For the purpose of implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, there shall be levied an additional penalty of one dollar for every ten dollars ($10) or fraction thereof in each county which shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except parking offenses subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code. These moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code. The board of supervisors shall establish in the county treasury a DNA Identification Fund into which shall be deposited the collected moneys pursuant to this section. The moneys of the fund shall be allocated pursuant to subdivision (b).

(b) (1) The fund moneys described in subdivision (a), together with any interest earned thereon, shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. Deposits to the fund may continue through and including the 20th year after the initial calendar year in which the surcharge is collected, or longer if and as necessary to make payments upon any lease or leaseback arrangement utilized to finance any of the projects specified herein.

(2) On the last day of each calendar quarter of the year specified in this subdivision, the county treasurer shall transfer fund moneys in the county's DNA Identification Fund to the state Controller for credit to the state's DNA Identification Fund, which is hereby established in the State Treasury, as follows:

(A) in the first two calendar years following the effective date of this section, 70 percent of the amounts collected, including interest earned thereon;

(B) in the third calendar year following the effective date of this section, 50 percent of the amounts collected, including interest earned thereon;

(C) in the fourth calendar year following the effective date of this section and in each calendar year thereafter, 25 percent of the amounts collected, including interest earned thereon.

(3) Funds remaining in the county's DNA Identification Fund shall be used only to reimburse local sheriff or other law enforcement agencies to collect DNA specimens, samples, and print impressions pursuant to this chapter; for expenditures and administrative costs made or incurred to comply with the requirements of paragraph (5) of subdivision (b) of Section 298 including the procurement of equipment and software integral to confirming that a person qualifies for entry into the Department of Justice DNA Database and Data Bank Program; and to local sheriff, police, district attorney, and regional state crime laboratories for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA crime scene samples from cases in which DNA evidence would be useful in identifying or prosecuting suspects, including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA crime scene samples from unsolved cases.

(4) The state's DNA Identification Fund shall be administered by the Department of Justice. Funds in the state's DNA Identification Fund, upon appropriation by the Legislature, shall be used by the Attorney General only to support DNA testing in the state and to offset the impacts of increased testing and shall be allocated as follows:

(A) Of the amount transferred pursuant to subparagraph (A) of paragraph (2) of subdivision (b), 90 percent to the Department of Justice DNA Laboratory, first, to comply with the requirements of Section 298.3 of the Penal Code and, second, for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and Databank Act, as amended, and 10 percent to the Department of Justice Information Bureau Criminal History Unit for expenditures and administrative costs that have been approved by the Chief of the Department of Justice Bureau of Forensic Services made or incurred to update equipment and software to facilitate compliance with the requirements of subdivision (e) of Section 299.5 of the Penal Code.

(B) Of the amount transferred pursuant to subparagraph (B) of paragraph (2) of subdivision (b), funds shall be allocated by the Department of Justice DNA Laboratory, first, to comply with the requirements of Section 298.3 of the Penal Code and, second, for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and Databank Act, as amended.

(C) Of the amount transferred pursuant to subparagraph (C) of paragraph (2) of subdivision (b), funds shall be allocated by the Department of Justice to the DNA Laboratory to comply with the requirements of Section 298.3 of the Penal Code and for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and Databank Act, as amended.

(c) On or before April 1 in the year following adoption of this section, and annually thereafter, the board of supervisors of each county shall submit a report to the Legislature and the Department of Justice. The report shall include the total amount of fines collected and allocated pursuant to this section, and the amounts expended by the county for each program authorized pursuant to paragraph (3) of subdivision (b) of this section. The Department of Justice shall make the reports publicly available on the department's Web site.

(d) All requirements imposed on the Department of Justice pursuant to the DNA Fingerprint, Unsolved Crime and Innocence Protection Act are contingent upon the availability of funding and are limited by revenue, on a fiscal year basis, received by the Department of Justice pursuant to this section and any additional appropriation approved by the Legislature for purposes related to implementing this measure.

(e) Upon approval of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, the Legislature shall loan the Department of Justice General

Fund in the amount of $7,000,000 for purposes of implementing that act. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time the loan is made. Principal and interest on the loan shall be repaid in full no later than four years from the date the loan was made and shall be repaid from revenue generated pursuant to this section.

SEC. V. General Provisions

(a) Conflicting Measures: If this measure is approved by the voters, but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this measure shall be self-executing and be given the full force of the law.

(b) Severability: The provisions of this measure are severable. If any provision of this measure 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.

(c) Amendment: The provisions of this measure may be amended by a statute that is passed by each house of the Legislature and signed by the Governor. All amendments to this measure shall be to further the measure and shall be consistent with its purposes to enhance the use of DNA identification evidence for the purpose of accurate and expeditious crime-solving and exonerating the innocent.

(d) Supplantation: All funds distributed to state or local governmental entities pursuant to this measure shall not supplant any federal, state, or local funds that would, in the absence of this measure, be made available to support law enforcement and prosecutorial activities.

MEASURES DEFEATED

INITIATIVE CONSTITUTIONAL AMENDMENT

Number on ballot

65. **Local Government Funds, Revenues. State Mandates.**

[Submitted by the initiative and rejected by electors November 2, 2004.]

PROPOSED LAW

THE LOCAL TAXPAYERS AND PUBLIC SAFETY PROTECTION ACT

SECTION 1. Short Title

These amendments to the California Constitution shall be known and may be cited as the Local Taxpayers and Public Safety Protection Act.

SECTION 2. Findings and Purposes

(a) The people of the State of California find that restoring local control over local tax dollars is vital to insure that local tax dollars are used to provide critical local services, including, but not limited to, police, fire, emergency and trauma care, public health, libraries, criminal justice, and road and street maintenance. Reliable funding for these services is essential for the security, well-being, and quality of life of all Californians.

(b) For many years, the Legislature has taken away local tax dollars used by local governments so that the state could control those local tax dollars. In

fact, the Legislature has been taking away billions of local tax dollars each year, forcing local governments to either raise local fees or taxes to maintain services, or cut back on critically needed local services.

(c) The Legislature's diversion of local tax dollars from local governments harms local governments' ability to provide such specific services as police, fire, emergency and trauma care, public health, libraries, criminal justice, and road and street maintenance.

(d) In recognition of the harm caused by diversion of local tax dollars and the importance placed on voter control of major decisions concerning government finance, and consistent with existing provisions of the California Constitution that give the people the right to vote on fiscal changes, the people of the State of California want the right to vote upon actions by the state government that take local tax dollars from local governments.

(e) The Local Taxpayers and Public Safety Protection Act is designed to insure that the people of the State of California shall have the right to approve or reject the actions of state government to take away local revenues that fund vitally needed local services.

(f) The Local Taxpayers and Public Safety Protection Act strengthens the requirement that if the state mandates local governments to implement new or expanded programs, then the state shall reimburse local governments for the cost of those programs.

(g) The Local Taxpayers and Public Safety Protection Act does not amend or modify the School Funding Initiative, Proposition 98 (Section 8 of Article XVI of the California Constitution).

(h) Therefore, the people declare that the purposes of this act are to:

(1) Require voter approval before the Legislature removes local tax dollars from the control of local government, as described in this measure.

(2) Insure that local tax dollars are dedicated to local governments to fund local public services.

(3) Insure that the Legislature reimburses local governments when the state mandates local governments to assume more financial responsibility for new or existing programs.

(4) Prohibit the Legislature from deferring or delaying annual reimbursement to local governments for state-mandated programs.

SECTION 3. Article XIII E is added to the California Constitution, to read:

ARTICLE XIII E

LOCAL TAXPAYERS AND PUBLIC SAFETY PROTECTION ACT

SECTION 1. Statewide Voter Approval Required

(a) Approval by a majority vote of the electorate, as provided for in this section, shall be required before any act of the Legislature takes effect that removes the following funding sources, or portions thereof, from the control of any local government:

(1) Reduces, or suspends or delays the receipt of, any local government's proportionate share of the local property tax when the Legislature exercises its power to apportion the local property tax; or requires any local government to remit local property taxes to the State, a state-created fund, or, without the consent of the affected local governments, to another local government.

(2) Reduces, or delays or suspends the receipt of, the Local Government Base Year Fund to any local government, without appropriating funds to offset the reduction, delay, or suspension in an equal amount.

(3) Restricts the authority to impose, or changes the method of distributing, the local sales tax.

(4) Reduces, or suspends or delays the receipt of, the 2003 Local Government Payment Deferral.

(5) Fails to reinstate the suspended Bradley-Burns Uniform Local Sales and Use Tax rate in accordance with Section 97.68 of the Revenue and Taxation Code, as added by Chapter 162 of the Statutes of 2003; or reduces any local government's allocation of the property tax required by Section 97.68 of the Revenue and Taxation Code while the sales tax rate is suspended.

(b) Prior to its submission to the electorate, an act subject to voter approval under this section must be approved by the same vote of the Legislature as is required to enact a budget bill and shall not take effect until approved by a majority of those voting on the measure at the next statewide election in accordance with subdivision (c).

(c) When an election is required by this section, the Secretary of State shall present the following question to the electorate: "Shall that action taken by the Legislature in [Chapter ___ of the Statutes of ___], which affects local revenues, be approved?"

SEC. 2. Definitions

(a) "Local government" means any city, county, city and county, or special district.

(b) "Local Government Base Year Fund" means the amount of revenue appropriated in the 2002–03 fiscal year in accordance with Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code, adjusted annually based upon the change in assessed valuation of vehicles that are subject to those provisions of law. In the event that the fees imposed by those provisions of law are repealed, then the fund shall be adjusted annually on July 1 by an amount not less than the percentage change in per capita personal income and the change in population, as calculated pursuant to Article XIII B.

(c) "2003 Local Government Payment Deferral" means the amount of revenues required to be transferred to local government from the General Fund specified in subparagraph (D) of paragraph (3) of subdivision (a) of Section 10754 of the Revenue and Taxation Code in effect on August 11, 2003.

(d) "Local property tax" means any local government's January 1, 2003, proportionate share of ad valorem taxes on real property and tangible personal property apportioned pursuant to the Legislature's exercise of its power to apportion property taxes as specified in Section 1 of Article XIII A. "Local property tax" also means any local government's allocation of the ad valorem tax on real property and tangible personal property pursuant to Section 16 of Article XVI.

(e) "Local sales tax" means any sales and use tax imposed by any city, county, or city and county pursuant to the terms of 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) in accordance with the law in effect on January 1, 2003.

(f) "Special district" means an agency of the State, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions with limited geographic boundaries, including redevelopment agencies, but not including school districts, community college districts, or county offices of education.

(g) "State" means the State of California.

SEC. 3. Interim Measures

(a) The operation and effect of any statute, or portion thereof, enacted between November 1, 2003, and the effective date of this article, that would have required voter approval pursuant to Section 1 if enacted on or after the effective date of this act (the "interim statute"), shall be suspended on that date and shall have no further force and effect until the date the interim statute is approved by the voters at the first statewide election following the effective date of this article in the manner specified in Section 1. If the interim statute is not approved by the voters, it shall have no further force and effect.

(b) If the interim statute is approved by the voters, it shall nonetheless have no further force and effect during the period of suspension; provided, however, that the statute shall have force and effect during the period of suspension if the interim statute or a separate act of the Legislature appropriates funds to affected local governments in an amount which is not less than the revenues affected by the interim statute.

(c) A statute or other measure that is enacted by the Legislature and approved by the voters between November 1, 2003, and the effective date of this article is not an interim statute within the meaning of this section.

SECTION 4. Section 6 of Article XIII B of the California Constitution is amended to read:

SEC. 6. *(a)* Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall *annually* provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

~~(a)~~ *(1)* Legislative mandates requested by the local agency affected ~~;~~ .

~~(b)~~ *(2)* Legislation defining a new crime or changing an existing definition of a crime ~~; or~~ .

~~(c)~~ *(3)* Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(b) The annual subvention of funds required by this section shall be transmitted to the local government within 180 days of the effective date of the statute or regulation or order by a state officer or agency that mandates a new program or higher level of service, or within 180 days of a final adjudication that a subvention of funds is required pursuant to this section. For purposes of this section, the Legislature or any state agency or officer mandates a new program or higher level of service when it creates a new program, requires services not previously required to be provided, increases the frequency or duration of required services, increases the number of persons eligible for services, or transfers to local government complete or partial financial responsibility for a program for which the State previously had complete or partial financial responsibility.

(c) If, during the fiscal year in which a claim for reimbursement is filed for a subvention of funds, the Legislature does not appropriate a subvention of funds that provides full reimbursement as required by subdivision (a), or does not appropriate a subvention of funds that provides full reimbursement as part of the state budget act in the fiscal year immediately following the filing of that claim for reimbursement, then a local government may elect one of the following options:

(1) Continue to perform the mandate. The local government shall receive reimbursement for its costs to perform the mandate through a subsequent appropriation and subvention of funds.

(2) Suspend performance of the mandate during all or a portion of the fiscal year in which the election permitted by this subdivision is made. The local government may continue to suspend performance of the mandate during all or a portion of subsequent fiscal years until the fiscal year in which the Legislature appropriates the subvention of funds to provide full reimbursement as required by subdivision (a). A local government shall receive reimbursement for its costs for that portion of the fiscal year during which it performed the mandate through a subsequent appropriation and subvention of funds.

The terms of this subdivision do not apply to, and a local government may not make the election provided for in this subdivision for, a mandate that either requires a local government to provide or modify any form of protection, right, benefit, or employment status for any local government employee or retiree, or provides or modifies any procedural or substantive right for any local government employee or employee organization, arising from, affecting, or directly relating to future, current, or past local government employment.

(d) For purposes of this section, "mandate" means a statute, or action or order of any state agency, which has been determined by the Legislature, any court, or the Commission on State Mandates or its designated successor, to require reimbursement pursuant to this section.

SECTION 5. Construction

(a) This measure shall be liberally construed to effectuate its purposes, which include providing adequate funds to local government for local services, including, but not limited to, such services as police, fire, emergency and trauma care, public health, libraries, criminal justice, and road and street maintenance.

(b) This measure shall not be construed either to alter the apportionment of the ad valorem tax on real property pursuant to Section 1 of Article XIII A of the California Constitution by any statute in effect prior to January 1, 2003, or to prevent the Legislature from altering that apportionment in compliance with the terms of this measure.

(c) Except as provided in Section 3 of Article XIII E of the California Constitution as added by Section 3 of this act, the provisions of Section 1 of Article XIII E of the California Constitution as added by Section 3 of this act apply to all statutes adopted on or after the effective date of this act.

SECTION 6. If any part of this measure or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications that reasonably can be given effect without the invalid provision or application.

INITIATIVE CONSTITUTIONAL AMENDMENTS AND STATUTES

Number on ballot

62. **Elections. Primaries.**

[Submitted by the initiative and rejected by electors November 2, 2004.]

PROPOSED LAW

VOTER CHOICE OPEN PRIMARY ACT

SECTION 1. Title.

This measure shall be known and may be cited as the "Voter Choice Open Primary Act."

SEC. 2. Findings and Declarations.

The people of the State of California hereby find and declare all of the following:

(a) The current system of primaries in California limits voters' choices, and has resulted in a steady decline in voter participation in this state.

(b) The "Voter Choice Open Primary Act" will establish an election system in California that will allow all voters to vote for state elected offices and federal elected offices on a primary election ballot regardless of the party registration of the candidates or the voters.

(c) A voter choice open primary will ensure California voters more choice, greater participation, increased privacy, and a sense of fairness without burdening political parties' constitutional rights. Encouraging California citizens to vote is a legitimate and essential objective of this state, and will preserve constitutional order by ensuring a strong, participatory democratic process.

(d) A voter choice open primary will permit California voters to select the candidate they most prefer, regardless of the candidate's party registration. This type of primary will result in more competitive election contests in which candidates will be able to take positions on a wide range of issues.

(e) A voter choice open primary will give California voters a real choice. They will be able to vote for any candidate for any voter-nominated office in the primary election, and will not be limited to voting only for those candidates of the party, if any, with which the candidates are registered.

(f) A voter choice open primary will guarantee competition in the general election. California voters will be given two competitive choices in the general election, involving greater voter participation than in the primary election. This will replace the current system in which the political parties protect incumbents through reapportionment plans, making over 90 percent of all state legislative and congressional seats safe for incumbents or candidates of one or the other of the major parties.

(g) A voter choice open primary will result in greater voter participation. By allowing voters complete freedom of choice among many candidates for office, regardless of the candidates' party registration, a voter choice open primary will encourage increased voter participation. In addition, some two million voters who have chosen not to register with a party, comprising some 15 percent of all California voters, will have a chance to participate fully in the voter choice open primary.

(h) A voter choice open primary will result in a greater number of candidates running for state elected offices and federal elected offices. Candidates who are not registered with a political party will now be able to compete in primary elections.

(i) A voter choice open primary will preserve the right of California's political parties to endorse candidates for voter-nominated offices by any method selected by the parties.

(j) A voter choice open primary will not infringe on the constitutional rights of political parties. California political parties will continue to decide whether non-party members: (1) may participate in the selection of delegates to a national political party convention at which a nominee for President is chosen; or (2) may participate in the selection of members of political party county central committees; or both.

(k) A voter choice open primary will not affect the power of the Legislature to alter existing law governing the means by which political parties select delegates to national political party conventions at which a party nominee for President is chosen, or elect or select members of political party state and county central committees, or both.

(l) A political party will have the right to determine whether or not the voter registration status of candidates registered as voters with that particular political party will be included on the ballot, sample ballot, voter pamphlet, and other related election materials intended for distribution to the voters.

SEC. 3. Purpose and Intent.

The people of the State of California hereby declare their purpose and intent in enacting the "Voter Choice Open Primary Act" to be as follows:

(a) To amend the current primary election system in California, which limits voters' choices and has resulted in a steady decline in voter participation in this state.

(b) To establish an election system that allows all California voters to vote for candidates for state elected offices and federal elected offices on a primary election ballot, regardless of the party registration, if any, of the candidates or the voters.

(c) To ensure California voters more choice, greater participation, increased privacy, and a sense of fairness, without burdening political parties' constitutional rights.

(d) To increase voter participation by allowing California voters complete freedom of choice to select their most preferred candidate, regardless of his or her party registration.

(e) To give California voters a real choice by allowing them to vote for any candidate for any voter-nominated office in the primary election.

(f) To increase competition in the general election by giving California voters two competitive choices in the general election, where some two to four million additional voters vote, than in the primary election.

(g) To allow some two million California voters who have chosen not to register with a political party the chance to participate fully in a voter choice open primary.

(h) To encourage a greater number of candidates to run for voter-nominated offices.

(i) To preserve the right of California's political parties to endorse candidates for voter-nominated offices and to decide whether non-party members may

participate in the selection of a party's presidential delegates or party county central committee members, or both.

(j) To protect the constitutional rights of political parties.

(k) To retain existing law and the power of the Legislature to alter existing law governing the means by which political parties select delegates to national political party conventions, or elect or select members of political party state and county central committees, or both.

(l) To give each qualified political party the right to determine whether the voter registration status of candidates registered with the party will be included on the ballot and other related election materials intended for distribution to the voters.

SEC. 4. Section 5 of Article II of the California Constitution is amended to read:

SEC. 5. *(a) The State of California shall hold a voter choice open primary election for the offices specified in subdivisions (e) and (f).*

(b) A voter choice open primary is a direct or special primary election in which each voter, whether registered or not registered with a political party, may vote for any qualified candidate, including qualified write-in candidates, for each office for which the voter is eligible to vote in the voter's respective political subdivision.

(c) All candidates shall be listed on a single voter choice open primary ballot. The candidates, regardless of party registration, including candidates registered with no party, who are the top two vote-getters for each office, shall be listed on the general election ballot.

(d) In special elections, all candidates shall be listed on a single special voter choice open primary ballot. If one candidate receives a majority of the votes on the special voter choice open primary ballot, that candidate shall be declared elected. If no candidate receives a majority of the votes on the special voter choice open primary ballot, the candidates, regardless of party registration, including candidates registered with no party, who are the top two vote-getters for each office shall be listed on the special general election ballot.

(e) The state elected offices in a voter choice open primary election shall include the offices of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Member of the State Legislature, and Member of the Board of Equalization.

(f) The federal elected offices in a voter choice open primary election shall include the offices of Member of the United States House of Representatives and Member of the United States Senate.

(g) The Legislature shall provide for primary elections *on a ballot separate from the voter choice open primary ballot* for ~~partisan offices~~ *delegates to a national political party convention at which a nominee for President is chosen* , including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

(h) Nothing in this section shall be construed to alter the law governing recall elections.

SEC. 5. 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~~ *voter-nominated* office *, or for a*

political party position 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 *for presidential elector* pursuant to ~~Section 8304~~ *Part 2 (commencing with Section 8300) of Division 8*.

(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. 6. Section 322.5 is added to the Elections Code, to read:

322.5. "Federal elected office" means any federal office in the Congress of the United States of America that is filled by the voters at an election, including specifically members of the House of Representatives and of the United States Senate. Members of the House of Representatives and of the United States Senate shall be considered voter-nominated offices. The offices of President and Vice President of the United States, for which candidates are chosen through the process of both (1) voters electing, at a direct presidential primary election, delegates to a national political party convention at which a nominee for President is chosen, and (2) the convening of the electoral college subsequent to the national general presidential election, shall not be considered to be federal elected offices.

SEC. 7. Section 323 of the Elections Code is amended to read:

323. "Federal election" means any presidential election, general election, primary election, or special election held solely or in part for the purpose of selecting, nominating, or electing *:* ~~any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, or Member of the United States House of Representatives.~~

(a) In any year which is evenly divisible by the number four, any candidate for President or Vice President (1) who delegates to a national political party convention choose as their nominee or (2) who may be selected by the electoral college system; or

(b) Any candidate for federal elected office for the Congress of the United States.

SEC. 8. Section 334 of the Elections Code is amended to read:

334. "Nonpartisan office" means ~~an~~ *the* office ~~for which no party may nominate a candidate.~~ *of the Superintendent of Public Instruction and* ~~Judicial~~ *judicial* , school, county, and municipal offices ~~are nonpartisan offices~~ . *"Nonpartisan office" also means offices not otherwise defined in Sections 322.5 and 356.5. "Nonpartisan office" shall not mean any political party position as defined in Section 338.*

SEC. 9. Section 334.5 is added to the Elections Code, to read:

334.5. "No party" means a voter who indicates on his or her affidavit of registration that he or she does not designate a political party when registering to vote. The term "no party" shall also mean the status of any person registered as a voter, or who may register as a voter, with the designated category of "decline to state" a political party on his or her affidavit of registration, as described in subdivision (b) of Section 2151. The designation of "decline to state" shall include any person who registers as "no party" on his or her affidavit of registration. Any person who is a candidate with the designation of "no party" on the ballot shall be considered an officeholder independent of any political party once elected to office and at all times during which such person maintains his or her "no party" registration status while serving as the officeholder.

SEC. 10. Section 337 is added to the Elections Code, to read:

337. "Party ballot" means a ballot for a particular political party, as defined in Section 337.5, on which shall be listed either or both of the following:

(a) In any year which is evenly divisible by the number four, the names of candidates for President from among whom delegates to a national political party convention of that party choose their nominee; and

(b) Political party positions relating to members to be elected for county central committees of that party.

SEC. 11. Section 337.3 is added to the Elections Code, to read:

337.3. "Political affiliation" means the status of a voter as being registered with a qualified political party or as "no party". Any references in this code to the affiliation of a voter shall mean the status of a voter as being registered with a particular qualified political party or as "no party" on the voter's affidavit of registration. Notwithstanding this definition, any references to the affiliation of a voter in Division 7 (commencing with Section 7050) shall mean the registration status of a voter as being registered with a particular political party.

SEC. 12. Section 338 of the Elections Code is amended and renumbered to read:

~~338.~~ *337.5.* ~~"Party"~~ *"Political party"* means a political party or organization that has qualified ~~for participation in any primary election~~ *pursuant to Division 5 (commencing with Section 5000) . References in this code to "party" shall refer to a political party.*

SEC. 13. Section 337 of the Elections Code is amended and renumbered to read:

~~337.~~ *338.* ~~"Partisan office"~~ *"Political party position"* means ~~an office for which a party may nominate a candidate~~ *(a) any delegate to a national political party convention who shall choose a nominee for President, or (b) any political party central committee member who is elected only by voters registered with, or otherwise authorized by, the political party with which such delegate or member is registered .*

SEC. 14. Section 338.5 is added to the Elections Code, to read:

338.5. "Political subdivision" means the area within which voters reside who are qualified to vote with respect to particular political party positions, federal elected offices, state elected offices, nonpartisan offices, or measures that qualify to be listed on the election ballot in that area.

SEC. 15. Section 356.5 is added to the Elections Code, to read:

356.5. "State elected office" means a state office that is filled by the voters at a voter choice open primary election or at a general election, including specifically the offices of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer,

Superintendent of Public Instruction, Member of the Legislature, and Member of the State Board of Equalization. All of these offices shall be considered voter-nominated offices, with the exception of Superintendent of Public Instruction, which shall be considered a nonpartisan office.

SEC. 16. Section 359.2 is added to the Elections Code, to read:

359.2. "Voter choice open primary" means a direct primary election or a special primary election in which each voter, regardless of party registration, including a voter not registered with any political party, may vote in the manner described in Section 2001 for any qualified candidate for each voter-nominated office for which the voter is eligible to vote in the relevant political subdivision, and in which all candidates for voter-nominated offices, regardless of party registration, including candidates not registered with a political party, shall be listed on a single voter choice open primary ballot.

SEC. 17. Section 359.3 is added to the Elections Code, to read:

359.3. (a) "Voter choice open primary ballot" means a ballot on which shall be listed the following:

(1) Candidates for voter-nominated offices;

(2) Candidates for non-partisan offices; and

(3) Measures.

(b) In the event that a county elections official determines that a voter choice open primary ballot will be larger than can be conveniently handled, the county elections official may create a separate ballot for voters, containing nonstatewide nonpartisan offices and nonstatewide measures, pursuant to Section 13230. This separate ballot shall be titled with the heading: "LOCAL ELECTED OFFICES AND MEASURES BALLOT". Statewide nonpartisan offices and statewide measures shall at all times be included on the "Voter Choice Open Primary Ballot" and not on the "Local Elected Offices and Measures Ballot".

SEC. 18. Section 359.5 is added to the Elections Code, to read:

359.5. (a) "Voter-nominated office" means any state elected office or federal elected office for which a candidate is nominated or elected by the voters, regardless of the political party or "no party" registration status of both the candidate and the voters.

(1) Any election to a "voter-nominated office" shall not utilize a political party nomination process.

(2) The voter registration status of a candidate for voter-nominated office shall be stated, as described in Section 13105, either as with a qualified political party, subject to the political party's consent as specified in Section 7031, or as "no party" on a ballot, a sample ballot, and the voter pamphlet. The following statement shall be included on the ballot and sample ballot and in the voter pamphlet: "The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters' informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate." The statement shall be printed in not less than eight-point boldface type on each page of a ballot and a sample ballot on which the political party registration status of any candidate is printed and in not less than 10-point boldface type on each page in a ballot pamphlet on which the political party registration status of any candidate is printed. The state elected offices in a voter choice open primary election shall include the offices of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Member of

the State Legislature, and Member of the Board of Equalization. The federal elected offices in a voter choice open primary election shall include the offices of Member of the United States House of Representatives and Member of the United States Senate.

(b) "Voter-nominated office" shall not mean offices as described in Section 334, any delegate to a national political party convention who shall choose a nominee for President, or any political party central committee member. Delegates to national political party conventions and county central committee members, which shall be considered political party positions and not voter-nominated offices, shall be selected or elected only by voters registered with, or otherwise authorized pursuant to subdivision (c) of Section 13102 by, the political party with which such delegates and members are registered.

SEC. 19. Section 2001 is added to the Elections Code, to read:

2001. (a) Each voter entitled to vote, whether registered or not registered with a political party, shall be able to vote for all state elected offices and federal elected offices in each voter's respective political subdivision in every voter choice open primary election.

(b) All registered voters shall have the choice to vote for any of the candidates described in subdivision (a) regardless of the political party registration, if any, of the candidate.

(c) Subdivision (a) shall not apply to the choosing, selection or election of political party positions as defined in Section 338.

SEC. 20. Section 2150 of the Elections Code is amended to read:

2150. (a) The affidavit of registration shall show:

(1) The facts necessary to establish the affiant as an elector.

(2) The affiant's name at length, including his or her given name, and a middle name or initial, or if the initial of the given name is customarily used, then the initial and middle name. The affiant's given name may be preceded, at affiant's option, by the designation of Miss, Ms., Mrs., or Mr. No person shall be denied the right to register because of his or her failure to mark a prefix to the given name and shall be so advised on the voter registration card. This subdivision shall not be construed as requiring the printing of prefixes on an affidavit of registration.

(3) The affiant's place of residence, residence telephone number, if furnished, and e-mail address, if furnished. No person shall be denied the right to register because of his or her failure to furnish a telephone number or e-mail address, and shall be so advised on the voter registration card.

(4) The affiant's mailing address, if different from the place of residence.

(5) The affiant's date of birth to establish that he or she will be at least 18 years of age on or before the date of the next election.

(6) The state or country of the affiant's birth.

(7) The affiant's California driver's license number, California identification card number, or other identification number as specified by the Secretary of State. No person shall be denied the right to register because of his or her failure to furnish one of these numbers, and shall be so advised on the voter registration card.

(8) The affiant's political party ~~affiliation~~ *or "no party" registration. The word "Party" shall follow the listing of each qualified political party on the affidavit of registration* .

(9) That the affiant is currently not imprisoned or on parole for the conviction of a felony.

(10) A prior registration portion indicating whether the affiant has been registered at another address, under another name, or as ~~intending to affiliate~~ *registered* with another party ~~:~~ *or as "no party."* If the affiant has been so registered, he or she shall give an additional statement giving that address, name, or party *or "no party" registration status* .

(b) The affiant shall certify the content of the affidavit as to its truth and correctness, under penalty of perjury, with the signature of his or her name and the date of signing. If the affiant is unable to write he or she shall sign with a mark or cross.

(c) The affidavit of registration shall also contain a space that would enable the affiant to state his or her ethnicity or race, or both. An affiant may not be denied the ability to register because he or she declines to state his or her ethnicity or race.

(d) If any person, including a deputy registrar, assists the affiant in completing the affidavit, that person shall sign and date the affidavit below the signature of the affiant.

SEC. 21. Section 2151 of the Elections Code is amended to read:

2151. *(a)* At the time of registering and of transferring registration, each elector may *designate a political party on his or her affidavit of registration* ~~declare the name of the political party with which he or she intends to affiliate at the ensuing primary election~~ . The name of that political party shall be stated in the affidavit of registration and the index.

The voter registration card shall inform the affiant that any elector may ~~decline to state~~ *designate "no party" instead of* a political *party* ~~affiliation~~ , but no person shall be entitled to vote the ballot of any political party at any ~~primary~~ election unless he or she has stated the name of the party ~~with which he or she intends to affiliate~~ *on the affidavit of registration* or unless he or she has ~~declined to state a party affiliation~~ *designated "no party"* and the political party, by party rule duly noticed to the Secretary of State, authorizes a person who has ~~declined to state a party affiliation~~ *designated "no party"* to vote the ballot of that political party. The voter registration card shall include a listing of all qualified political parties *and of "No Party" from which a person may designate a choice of either a political party or "no party." The word "Party" shall follow the listing of each qualified political party on the affidavit of registration* .

No person shall be permitted to vote the ballot of any party or for any delegates to the convention of any party other than the party designated in his or her registration, except as provided by Section 2152 or unless he or she has ~~declined to state a party affiliation~~ *designated "no party"* and the party, by party rule duly noticed to the Secretary of State, authorizes a person who has ~~declined to state a party affiliation~~ *designated "no party"* to vote the party ballot or for delegates to the party convention.

(b) All affidavits of registration on which persons have designated that they "decline to state" a political party shall be classified and treated by elections officials as a designation of "no party" consistent with the definition contained in Section 334.5. Elections officials may continue to use, distribute, and receive existing supplies of affidavits of registration that include the designation of "decline to state" and that may or may not contain the word "party" after the listing of each qualified political party. However, elections officials shall take all reasonable steps to reprint and provide new affidavits of registration that comply with subsection (a) as supplies of the prior affidavit format are fully utilized.

SEC. 22. Section 2152 of the Elections Code is amended to read:

2152. Whenever any voter ~~has declined to designate or has changed~~ *desires to change* his or her political *party or "no party" registration status* ~~affiliation~~ prior to the close of registration for an election, he or she may either so designate or have a change recorded by executing a new affidavit of registration and completing the prior registration portion of the affidavit.

SEC. 23. Section 2154 of the Elections Code is amended to read:

2154. In the event that the county elections official receives an affidavit of registration that does not include portions of the information for which space is provided, the county elections official ~~voters~~ shall apply the following rebuttable presumptions:

(a) If no middle name or initial is shown, it shall be presumed that none exists.

(b) If ~~no~~ *the affiant has not designated a political* party ~~affiliation is shown~~ , it shall be presumed that the affiant has ~~no party affiliation.~~ *designated "no party."*

(c) If no execution date is shown, it shall be presumed that the affidavit was executed on or before the 15th day prior to the election, provided that (1) the affidavit is received by the county elections official on or before the 15th day prior to the election, or (2) the affidavit is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.

(d) If the affiant fails to identify his or her state of birth within the United States, it shall be presumed that the affiant was born in a state or territory of the United States if the birthplace of the affiant is shown as "United States," "U.S.A.," or other recognizable term designating the United States.

SEC. 24. Section 2155 of the Elections Code is amended to read:

2155. Upon receipt of a properly executed affidavit of registration or address correction notice or letter pursuant to Section 2119, Article 2 (commencing with Section 2220), or the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), the county elections official shall send the voter a voter notification by nonforwardable, first-class mail, address correction requested. The voter notification shall state the party ~~affiliation~~ *or "no party" status* for which the voter has registered in the following format:

Party: (Name of political party *, e.g., Libertarian, or No Party*)

The voter notification shall be substantially in the following form:

VOTER NOTIFICATION

You are registered to vote. The party ~~affiliation~~ *or "no party" status* for which you have registered is shown on the reverse of this card. This card is being sent as a notification of:

1. Your recently completed affidavit of registration,

OR,

2. A correction to your registration because of an official notice that you have moved. If your residence address has not changed or if your move is temporary, please call or write the county elections official immediately.

You may vote in any election held 15 or more days after the date shown on the reverse side of this card.

Your name will appear on the index kept at the polls.

Please contact your county elections office if the information shown on the reverse side of this card is incorrect.

(Signature of Voter)

SEC. 25. Section 2185 of the Elections Code is amended to read:

2185. Upon written demand of the chair or vice chair of a party state central committee or of the chair of a party county central committee, the county elections official shall furnish to each committee, without charge therefor, the index of registration for the primary and general elections or for any special election at which a ~~partisan~~ *voter-nominated* office *or a political party position* is to be filled. The index of registration shall be furnished to the committee demanding the index not less than 25 days prior to the day of the primary, general, or special election for which they are provided. Upon written demand, the county elections official shall also furnish to the committee the index of registration of voters who registered after the 54th day before the election, which shall be compiled and prepared by Assembly districts. The county elections official shall furnish either two printed copies or, if available, one copy in an electronic form of the indexes specified in this section.

SEC. 26. 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.~~ *are registered as "no party."* The statement shall also show the number of voters, by political *party or "no party" registration status* ~~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~~ *registration and "no party" registration status* , 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. 27. Section 3006 of the Elections Code is amended to read:

3006. (a) Any printed application that is to be distributed to voters for requesting absent voter ballots shall contain spaces for the following:

(1) The printed name and residence address of the voter as it appears on the affidavit of registration.

(2) The address to which the ballot is to be mailed.

(3) The voter's signature.

(4) The name and date of the election for which the request is to be made.

(5) The date the application must be received by the elections official.

(b) (1) The information required by paragraphs (1), (4), and (5) of subdivision (a) may be preprinted on the application. The information required by paragraphs (2) and (3) of subdivision (a) shall be personally affixed by the voter.

(2) An address, as required by paragraph (2) of subdivision (a), may not be the address of any political party, a political campaign headquarters, or a candidate's residence. However, a candidate, his or her spouse, immediate family members, and any other voter who shares the same residence address as the candidate may request that an absentee ballot be mailed to the candidate's residence address.

(3) Any application that contains preprinted information shall contain a conspicuously printed statement, as follows: "You have the legal right to mail or deliver this application directly to the local elections official of the county where you reside."

(c) The application shall inform the voter that if he or she is not ~~affiliated~~ *registered* with a political party, *in addition to receiving any other ballot or ballots to which the voter is entitled,* the voter may request *to receive* an absentee *party* ballot for a particular political party for the primary election, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote. The application shall contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads, as follows: "I am not presently ~~affiliated~~ *registered* with any political party. However, for this primary election only, I request an absentee ballot for the _____ Party." The name of the political party shall be personally affixed by the voter.

(d) The application shall provide the voters with information concerning the procedure for establishing permanent absentee voter status, and the basis upon which permanent absentee voter status is claimed.

(e) The application shall be attested to by the voter as to the truth and correctness of its content, and shall be signed under penalty of perjury.

SEC. 28. Section 3007.5 of the Elections Code is amended to read:

3007.5. (a) The Secretary of State shall prepare and distribute to appropriate elections officials a uniform electronic application format for an absent voter's ballot that conforms to this section.

(b) The uniform electronic application shall contain spaces for at least the following information:

(1) The name and residence address of the registered voter as it appears on the affidavit of registration.

(2) The address to which the ballot is to be mailed.

(3) The name and date of the election for which the request is made.

(4) The date the application must be received by the elections official.

(5) The date of birth of the registered voter.

(c) The uniform electronic application shall inform the voter that if he or she is not ~~affiliated~~ *registered* with a political party, *in addition to receiving any other ballot or ballots to which the voter is entitled,* the voter may request *to receive* an absentee *party* ballot for a particular political party for the primary election, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote. The application shall contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall list the parties that have notified the Secretary of State of the adoption of such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads, as follows: "I am not presently ~~affiliated~~ *registered* with any political party. However, for this primary election only, I request an absentee ballot for the _____ Party." The name of the political party shall be personally affixed by the voter.

(d) The uniform electronic application shall contain a conspicuously printed statement, as follows: "Only the registered voter himself or herself may apply for an absentee ballot. An application for an absentee ballot made by a person other than the registered voter is a criminal offense."

(e) The uniform electronic application shall include the following statement: "A ballot will not be sent to you if this application is incomplete or inaccurate."

(f) The uniform electronic application format shall not permit the form to be electronically submitted unless all of the information required to complete the application is contained in the appropriate fields.

SEC. 29. Section 3205 of the Elections Code is amended to read:

3205. (a) Absent voter ballots mailed to, and received from, voters on the permanent absent voter list are subject to the same deadlines and shall be processed and counted in the same manner as all other absent voter ballots.

(b) Prior to each primary election, county elections officials shall mail to every voter not ~~affiliated~~ *registered* with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that *if he or she is not registered with a political party, in addition to receiving any other ballot or ballots to which the voter is entitled,* he or she may request *to receive* an absentee *party* ballot for a particular political party for the primary election, if

that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. The notice shall also contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads as follows: "I am not presently ~~affiliated~~ *registered* with any political party. However, for this primary election only, I request an absentee ballot for the _____ Party." The name of the political party shall be personally affixed by the voter.

SEC. 30. Section 5000 of the Elections Code is amended to read:

5000. (a) For purposes of this division, the definition of ~~"party"~~ *"political party"* in Section ~~338~~ *337.5* is applicable.

(b) This chapter shall apply to political bodies and to parties not otherwise provided for in Division 7 (commencing with Section ~~7050~~ *7030*).

SEC. 31. Section 5100 of the Elections Code is amended to read:

5100. A party is qualified to participate in any primary election under any of the following conditions:

~~(a) If at the last preceding gubernatorial election there was polled for any one of its candidates for any office voted on throughout the state, at least 2 percent of the entire vote of the state.~~

~~(b)~~ *(a)* If on or before the 135th day before any primary election, it appears to the Secretary of State, as a result of examining and totaling the statement of voters and their political ~~affiliations~~ *party registrations* transmitted to him or her by the county elections officials, that voters equal in number to at least ~~1~~ *one-third of 1* percent of the entire vote of the state at the last preceding gubernatorial election have declared their ~~intention to affiliate~~ *registration* with that party.

~~(c)~~ *(b)* If on or before the 135th day before any primary election, there is filed with the Secretary of State a petition signed by voters, equal in number to at least ~~10~~ *5* percent of the entire vote of the state at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that primary election. This petition shall be circulated, signed, verified and the signatures of the voters on it shall be certified to and transmitted to the Secretary of State by the county elections officials substantially as provided for initiative petitions. Each page of the petition shall bear a caption in 18-point boldface type, which caption shall be the name of the proposed party followed by the words "Petition to participate in the primary election."

SEC. 32. Part 1.5 (commencing with Section 7030) is added to Division 7 of the Elections Code, to read:

PART 1.5. GENERAL PROVISIONS

7030. Political parties qualifying pursuant to Division 5 (commencing with Section 5000) shall be entitled to participate in an election, as provided in this code, for the purpose of permitting voters who are registered with a particular party and any other voters pursuant to subdivision (c) of Section 13102 to select or elect political party positions as defined in Section 338. Any election pursuant to this section shall be conducted by means of a party ballot separate from the voter choice open primary ballot.

7031. Within 120 days after the effective date of this section, each qualified political party shall notify the Secretary of State whether or not it consents to inclusion on the ballot, sample ballot, voter pamphlet and other related elections materials intended for distribution to voters, of the voter registration status of

candidates registered as voters with that particular political party. The notice to the Secretary of State shall be on a form provided by the Secretary of State. Such consent, if given, shall apply uniformly to all offices listed in subdivisions (e) and (f) of Section 5 of Article II of the California Constitution for all direct and special primary and general elections. A party may notify the Secretary of State of its decision to change its consent at any time, to become effective for any elections held not less than 88 days after receipt of the notice by the Secretary of State. Within 120 days after a new political party qualifies pursuant to Division 5 (commencing with Section 5000), the party shall comply with the requirements of this section. For any qualified political party that does not provide a notice of its consent or lack of consent, it shall be deemed that the party does not consent to inclusion of the voter registration status of candidates registered with that party for the purposes described in this section.

7032. Any nomination of candidates for voter-nominated state elected offices and federal elected offices in a voter choice open primary election provided for in this code shall be made by the voters and not by political parties. Any candidate nominated by the voters for any voter-nominated office in any voter choice open primary election shall not be considered the nominee or endorsed candidate of any political party by virtue of such nomination by the voters.

7033. Nothing in this code shall be construed to infringe in any way upon the legal rights of any political party, duly qualified under Division 5 (commencing with Section 5000), and as defined in Section 337.5, to endorse candidates listed on a voter choice open primary ballot for any voter-nominated office.

SEC. 33. Section 8000 of the Elections Code is amended to read:

8000. *(a) This chapter shall apply to both of the following:*

(1) Nomination of candidates for voter-nominated state elected offices and federal elected offices, as defined in Section 359.5.

(2) Any other candidates for any other offices or political party positions described in this code who are not otherwise described in paragraph (1) of subdivision (a), or subdivision (b), of this section.

(b) This chapter does not apply to:

~~(a)~~ *(1)* Recall elections.

~~(b)~~ *(2)* Presidential primary.

~~(c)~~ *(3)* Nomination of officers of cities or counties whose charters provide a system for nominating candidates for those offices.

~~(d)~~ *(4)* Nomination of officers for any district not formed for municipal purposes.

~~(e)~~ *(5)* Nomination of officers for general law cities.

~~(f)~~ *(6)* Nomination of school district officers.

SEC. 34. Section 8000.5 is added to the Elections Code, to read:

8000.5. (a) Each voter entitled to vote, whether registered or not registered with a political party, shall receive a ballot in each direct voter choice open primary election by any voting mechanism the state deems official for any such election that includes all candidates for voter-nominated state elected offices and federal elected offices, and nonpartisan office, in the voter's political subdivision, as defined in this code. All candidates for voter-nominated office, whether registered with a political party or not, shall appear on every such ballot. Each voter entitled to vote, whether registered or not registered with a political party, shall be entitled to vote for any candidate on said ballot. The candidates, regardless of party registration, including candidates registered as "no party," who are the top two vote-getters for each voter-nominated office shall become

the nominees of the voters and be listed on the ballot for the ensuing general election.

(b) Ballots for use in presidential primaries and for political party positions shall be governed respectively by Division 6 (commencing with Section 6000) and Division 7 (commencing with Section 7030) and by other provisions of this code relating to such ballots.

SEC. 35. Section 8001 of the Elections Code is amended to read:

8001. (a) No declaration of candidacy for a ~~partisan~~ *voter-nominated state elected office or federal elected* office, or for membership on a county central committee, shall be filed~~,~~ by a candidate *whose affidavit of registration designates a particular political party* unless (1) at the time of presentation of the declaration and continuously for not less than three months immediately prior to that time, or for as long as he has been eligible to register to vote in the state, the candidate is shown by his affidavit of registration to be ~~affiliated~~ *registered* with the political party ~~the nomination of which he seeks~~ *designated in the declaration*, and (2) the candidate has not been registered ~~as affiliated~~ with a qualified political party other than that political party ~~the nomination of which he seeks~~ *designated in the declaration* within 12 months, or, in the case of an election governed by Chapter 1 (commencing with Section 10700) of Part 6 of Division 10, within three months immediately prior to the filing of the declaration.

(b) The elections official shall attach a certificate to the declaration of candidacy showing the date on which the candidate registered ~~as intending to affiliate~~ with the political party ~~the nomination of which he seeks~~ *designated in the declaration*, and indicating that the candidate has not been ~~affiliated~~ *registered* with any other qualified political party for the period specified in subdivision (a) *or (c)* immediately preceding the filing of the declaration. This section shall not apply to declarations of candidacy filed by a candidate ~~of~~ *registered with* a political party participating in its first direct primary election subsequent to its qualification as a political party pursuant to Section 5100.

(c) No declaration of candidacy for a voter-nominated state elected office or federal elected office shall be filed by a candidate whose affidavit of registration designates "no party" unless the candidate is not, and was not at any time during the 12 months preceding the filing of the declaration of candidacy, registered as a voter with any qualified political party, or, in the case of an election governed by Chapter 1 (commencing with Section 10700) of Part 6 of Division 10, at any time during the three months immediately preceding the filing of the declaration, registered as a voter with a political party qualified under Section 5100.

SEC. 36. Section 8003 of the Elections Code is repealed:

~~8003. This chapter does not prohibit the independent nomination of candidates under Part 2 (commencing with Section 8300), subject to the following limitations:~~

~~(a) A candidate whose name has been on the ballot as a candidate of a party at the direct primary and who has been defeated for that party nomination is ineligible for nomination as an independent candidate. He is also ineligible as a candidate named by a party central committee to fill a vacancy on the ballot for a general election.~~

~~(b) No person may file nomination papers for a party nomination and an independent nomination for the same office, or for more than one office at the same election.~~

SEC. 37. Section 8022 of the Elections Code is amended to read:

8022. (a) Each candidate for a ~~party~~ nomination *by the voters in a voter choice open primary election* for the office of State Senator or Member of the Assembly, or for any state constitutional office, or for Insurance Commissioner, at the direct *voter choice open* primary election shall file a written and signed declaration of his or her intention to become a candidate for ~~his or her party's~~ nomination *by the voters* for that office. The declaration of intention shall be filed with either the Secretary of State or the elections official of the county in which the candidate is a resident. The declaration of intention shall be filed, on a form to be supplied by the elections official, not more than 14 nor less than five days prior to the first day on which nomination papers may be presented for filing. If the incumbent fails to file a declaration of intention by the end of that period, persons other than the incumbent may file declarations of intention no later than the first day for filing nomination papers. However, if the incumbent's failure to file a declaration of intention 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 declaration of intention. The filing fees and copies of all declarations of intention filed with the county elections official in accordance with this article shall be immediately forwarded to the Secretary of State. The declaration of intention provided for in this section shall be in substantially the following form:

I hereby declare my intention to become a candidate for
~~the _____ Party's~~ nomination
~~(Name of political party)~~
by the voters for the office of _____
(Name of office and district, if any)
at the direct *voter choice open* primary election.
( ) I am registered as a voter with the _____ ; or
(Name of political party, if any)
( ) I am registered as a voter as "no party."
(Candidate check applicable statement)

_____
(Signature of candidate)

_____
(Address of candidate)

(b) No person may be a candidate nor have his or her name printed upon any ballot as a candidate for ~~a party~~ nomination *by the voters* for the office of Senator or Member of the Assembly, or for any state constitutional office, or for Insurance Commissioner at the direct *voter choice open* primary election unless he or she has filed the declaration of intention provided for in this section. However, if the incumbent of the office who is ~~affiliated~~ *registered* with any qualified political party files a declaration of intention, but for any reason fails to qualify for nomination for the office by the last day prescribed for the filing of nomination papers, an additional five days shall be allowed for the filing of nomination papers for the office, and any person, other than the incumbent if otherwise qualified, may file nomination papers for the office during the extended period, notwithstanding that he or she has not filed a written and signed declaration of intention to become a candidate for the office as provided in subdivision (a).

SEC. 38. Section 8025 of the Elections Code is amended to read:

8025. If ~~only one~~ *any* candidate has declared a candidacy for ~~a partisan~~ nomination *to a voter-nominated office* at the direct *voter choice open* primary election ~~for a party qualified to participate at that election~~ , and that candidate dies after the last day prescribed for the delivery of nomination documents to the elections official, as provided in Section 8020, but not less than ~~83~~ *74* days before the election, any person qualified under the provisions of Section 8001 may circulate and deliver nomination documents for the office to the elections official up to 5 p.m. on the ~~74th~~ *68th* day prior to the election. In that case, the elections official shall, immediately after receipt of those nomination documents, certify and transmit them to the Secretary of State in the manner specified in this article.

SEC. 39. Section 8040 of the Elections Code is amended to read:

8040. (a) The declaration of candidacy by a candidate shall be substantially as follows:

DECLARATION OF CANDIDACY

I hereby declare myself a ~~_____ Party~~ candidate for nomination to the office of _____ District Number _____ to be voted for at the primary election to be held _____, 20___, and declare the following to be true:

(1) My name is _____.

(2) (A) I am registered as a voter with the _____ *;*
(Name of political party, if any)

(This statement is required for a candidate for voter-nominated state elected office or federal elected office using a party registration status on the ballot, as permitted by a political party pursuant to Section 7031, or for member of a political party county central committee); or

(B) I am registered as a voter as "no party."

(This statement is required for candidates who designate "no party" registration)

(3) I want my name and occupational designation to appear on the ballot as follows: _____.

(4) Addresses:

(A) Residence _____
_____

(B) Business _____
_____

(C) Mailing _____
_____

(5) Telephone numbers: Day _____ Evening _____

(6) Web site: _____

(7) Fax number: _____

(8) Email address: _____

(9) I meet the statutory and constitutional qualifications for this office (including, but not limited to, citizenship, residency, and party ~~affiliation~~ *registration* ; if required). *(With respect to registration, candidates for voter-nominated offices or for county central committee members must comply with subdivision (a) of Section 8001 and candidates who register as "no party" must comply with subdivision (c) of Section 8001.*

(10) I am at present an incumbent of the following public office (if any) _____.

(11) If nominated, I will accept the nomination and not withdraw.

_____
Signature of candidate

State of California)
County of _____) ss.
)
Subscribed and sworn to before me this _____ day of ____, 20___.

_____
Notary Public (or other official)

Examined and certified by me this _____ day of ____, 20___.

_____
County Elections Official

WARNING: Every person acting on behalf of a candidate is guilty of a misdemeanor who deliberately fails to file at the proper time and in the proper place any declaration of candidacy in his or her possession which is entitled to be filed under the provisions of the Elections Code Section 18202.

(b) A candidate for a judicial office may not be required to state his or her residential address on the declaration of candidacy. However, in cases where the candidate does not state his or her residential address on the declaration of candidacy, the elections official shall verify whether his or her address is within the appropriate political subdivision and add the notation "verified" where appropriate.

(c) For purposes of subparagraph (A) of paragraph (2) of subdivision (a), the use by a candidate of his or her political party registration status on the ballot is subject to the candidate's registration status complying with the time limitations set forth in subdivision (a) of Section 8001 and, for candidates for voter-nominated offices, to the political party's consent as specified in Section 7031.

(d) For purposes of subparagraph (B) of paragraph (2) of subdivision (a), the use by a candidate of his or her registration status as "no party" on the ballot is subject to the candidate's registration status complying with the time limitations set forth in subdivision (c) of Section 8001.

(e) Notwithstanding any other provision of law, a person who intends to qualify as a candidate for a voter-nominated office, and who fails to comply with the requirements of subdivision (a) of Section 8001 for a reason other than the person's voluntary action, has the right to be listed as a candidate for that office on the ballot and shall have his or her voter registration status printed on the ballot as "No Party," provided that the person meets all other qualification requirements for candidacy for that office.

(f) Notwithstanding any other provision of law, a candidate who has met all qualification requirements for candidacy for a voter-nominated office, but who is found after such qualification not to be entitled to the application of paragraph (2) of subdivision (a) of Section 13105 for a reason other than a voluntary action by the candidate, has the right to be listed as a candidate for that office on the ballot and shall have his or her voter registration status printed on the ballot as "No Party." Subdivision (d) of Section 13105 shall not be applicable under this subdivision.

SEC. 40. Section 8041 of the Elections Code is amended to read:

8041. (a) The nomination paper *for a county central committee member candidate* shall be in substantially the following form:

NOMINATION PAPER

I, the undersigned signer for _____ for the _____ Party nomination to the ~~office~~ *county central committee* of _____ *County* , to be voted for at the primary election to be held on the _____ day of ____, 20___, hereby assert as follows:

I am a resident of _____ County and registered to vote at the address shown on this paper and ~~affiliated~~ *registered* with the _____ Party. ~~I am not at this time a signer of any other nomination paper of any other candidate for the above-named office, or in case there are several places to be filled in the above-named office,~~ I have not signed more nomination papers than there are places to be filled in the above-named ~~office~~ *county central committee* . My residence is correctly set forth after my signature hereto:

Name _____

Residence _____

(b) The nomination paper for candidates who are not county central committee member candidates shall be in substantially the following form:

NOMINATION PAPER

I, the undersigned signer for _____ for nomination to the office of _____, to be voted for at the primary election to be held on the _____ day of _____, 20___, hereby assert as follows:

I am a resident of _____ County and registered to vote at the address shown on this paper. I am not at this time a signer of any other nomination paper of any other candidate for the above-named office, or in case there are several places to be filled in the above-named office, I have not signed more nomination papers than there are places to be filled in the above-named office. My residence is correctly set forth after my signature hereto:

Name _____

Residence _____

~~(b)~~ *(c)* The affidavit of the circulator *for nomination papers as described in subdivisions (a) and (b)* shall read as follows:

AFFIDAVIT OF THE CIRCULATOR

I, _____, solemnly swear (or affirm) that the signatures on this section of the nomination paper were obtained between _____, 20___, and _____, 20 ___; that I circulated the petition and I saw the signatures on this section of the nomination paper being written; and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.

My voting residence is _____.

Signed _____

Subscribed and sworn to before me this _____ day of ____, 20___.

(SEAL) _____

Notary Public (or other official)

Examined and certified by me this ____ day of _____, 20__.

_____

Elections Official

WARNING: Every person acting on behalf of a candidate is guilty of a misdemeanor who deliberately fails to file at the proper time and in the proper place any nomination paper in his or her possession which is entitled to be filed under Section 18202 of the Elections Code.

SEC. 41. Section 8062 of the Elections Code is amended to read:

8062. (a) The number of registered voters required to sign a nomination paper for the respective offices *and political party positions* are as follows:

(1) ~~State~~ *Statewide constitutional* office *, Insurance Commissioner,* or United States Senate, not less than 65 nor more than 100.

(2) House of Representatives in Congress, State Senate or Assembly, Board of Equalization, or any office voted for in more than one county, and not statewide, not less than 40 nor more than 60.

(3) Candidacy in a single county or any political subdivision of a county, other than State Senate or Assembly, not less than 20 nor more than 40.

(4) ~~When~~ *Political party county central committee member, when* any political party has less than 50 voters in the state or in the county or district in which the election is to be held, one-tenth the number of voters of the party.

(5) When there are less than 150 voters in the county or district in which the election is to be held, not less than 10 nor more than 20.

(b) The number of registered voters required to sign a nomination paper for a candidate for the House of Representatives in Congress, California State Senate, or California State Assembly, to be voted for at a special election to fill a vacancy, shall comply with subdivision (a) of Section 8062 and must be filed in the manner prescribed in subdivision (a) of Section 10704.

~~(b)~~ *(c)* The provisions of this section are mandatory, not directory, and no nomination paper shall be deemed sufficient that does not comply with this section. However, this subdivision shall not be construed to prohibit withdrawal of signatures pursuant to Section 8067. This subdivision also shall not be construed to prohibit a court from validating a signature which was previously rejected upon showing of proof that the voter whose signature is in question is otherwise qualified to sign the nomination paper.

SEC. 42. Section 8068 of the Elections Code is amended to read:

8068. Signers shall be voters in the district or political subdivision in which the candidate is to be voted on . *Signers* ~~and shall~~ *need not* be *registered* ~~affiliated~~ with ~~the~~ *any political* party *to be eligible to sign nomination papers for a candidate for a voter-nominated office* ~~, if any, in which the nomination is proposed.~~ *, but must be registered with the appropriate party to sign nomination papers for a candidate for a political party central committee.*

SEC. 43. Section 8081 of the Elections Code is amended to read:

8081. Before any nomination document is filed in the office of the county elections official or forwarded for filing in the office of the Secretary of State, the county elections official shall verify *(1)* the signatures *in each case* , and *(2)* the political ~~affiliations~~ *party registration in the case of a person seeking a political party position,* of the signers on the nomination paper with the registration affidavits on file in the office of the county elections official. The county elections official shall mark "not sufficient" any signature *(a)* that does not appear in the same handwriting as appears on the affidavit of registration in his or her office, or *, (b) in the case of a political party position,* that is accompanied by a declaration of party ~~affiliation~~ *registration* that is not in accordance with the declaration of party ~~affiliation~~ *registration* in the affidavit of registration. The county elections official may cease to verify signatures once the minimum requisite number of signatures has been verified.

SEC. 44. Section 8106 of the Elections Code is amended to read:

8106. (a) Notwithstanding any other provision of this article, a candidate may submit a petition containing signatures of registered voters in lieu of a filing fee as follows:

(1) For the office of California State Assembly, 1,500 signatures.

(2) For the office of California State Senate and the United States House of Representatives, 3,000 signatures.

(3) For candidates running for statewide office, 10,000 signatures.

(4) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he or she seeks nomination is 2,000 or more, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 10 percent of the total of registered voters in the district in which he or she seeks nomination, whichever is less.

(5) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he or she seeks nomination is less than 2,000, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 20 percent of the total of registered voters in the district in which he or she seeks nomination, whichever is less.

~~(6) Notwithstanding any other provision of this section, a candidate seeking the nomination of a qualified party with whom he or she is registered, the registered voters of which who were eligible to vote at the last statewide election constituted less than 5 percent of all registered voters eligible to vote at the last statewide election, may submit a petition containing signatures of 10 percent of the registered voters of that party in the district in which he or she seeks nomination, or 150 signatures, whichever is less.~~

~~(7)~~ *(6)* A voter may sign both a candidate's nomination papers and his or her in-lieu-filing-fee petition. However, if signatures appearing on the documents are counted towards both the nomination paper and the in-lieu-filing-fee petition signature requirements, a person may only sign one of the documents.

(b) The Secretary of State or an elections official shall furnish to each candidate, upon request, and without charge therefor, forms for securing signatures. The number of forms which the elections official shall furnish a candidate shall be a quantity that provides the candidates with spaces for signatures sufficient in number to equal the number of signatures that the candidate is required to secure pursuant to subdivision (a) if the candidate desires that number of forms. However, the elections official, rather than provide the candidate with the number of forms set forth in the preceding sentence, or upon the request of a candidate, may provide the candidate with a master form that may be duplicated by the candidate at the candidate's expense for the purpose of circulating additional petitions. The Secretary of State shall provide the master form. The elections official may provide candidates a form other than the master form provided by the Secretary of State. However, that form shall meet all statutory requirements, and the elections official shall also make available and accept the master form provided by the Secretary of State. All forms shall be made available commencing 45 days before the first day for circulating nomination papers. However, in cases of vacancies for which a special election is authorized or required to be held to fill the vacancy, and where the prescribed nomination period would commence less than 45 days after the creation of the vacancy, the forms shall be made available within five working days after the creation of the vacancy. No other form except the form furnished by the Secretary of State or the elections official or forms duplicated from a master form shall be used to secure signatures. Each petition section shall bear an affidavit signed by the circulator, in substantially the same form as set forth in Section 8041. The substitution of signatures for fees shall be subject to the following provisions:

(1) Any registered voter may sign an in-lieu-filing-fee petition for any candidate for whom he or she is eligible to vote.

(2) If a voter signs more candidates' petitions than there are offices to be filled, the voter's signatures shall be valid only on those petitions which, taken in the order they were filed, do not exceed the number of offices to be filled.

(3) In-lieu-filing-fee petitions shall be filed at least 15 days prior to the close of the nomination period. Upon receipt of the minimum number of in-lieu-filing-fee signatures required, or a sufficient combination of signatures and pro rata filing fee, the elections official shall issue nomination papers provisionally. Within 10 days after receipt of a petition, the elections official shall notify the candidate of any deficiency. The candidate shall then, prior to the close of the nomination period, either submit a supplemental petition, or pay a pro rata portion of the filing fee to cover the deficiency.

(4) If the petition is circulated for an office in more than one county, the candidate shall submit the signatures to the elections official in the county in which the petition was circulated. The elections official shall at least two days after verifying the signatures on the petition, notify the Secretary of State of the total number of valid signatures. If the number of signatures is insufficient, the Secretary of State shall notify the candidate and the elections officials of the fact. The candidate may submit the necessary number of valid signatures at any time prior to the close of the period for circulating nomination papers. Each circulator of an in-lieu-filing-fee petition shall be a registered voter of the district or political subdivision in which the candidate is to be voted on. The circulator shall serve within the county in which he or she resides.

(5) Each candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The elections official shall not be required to determine the validity of a greater number of signatures than that required by this section.

(c) For the purposes of this section, the requisite number of signatures shall be computed from the latest registration figures forwarded to the Secretary of State pursuant to Section 2187 prior to the first day on which petitions are available.

(d) All valid signatures obtained pursuant to this section shall be counted towards the number of voters required to sign a nomination paper in accordance with Section 8061 ~~or 8405~~ .

SEC. 45. Section 8121 of the Elections Code is amended to read:

8121. Not less than five days before he or she transmits the certified list of candidates to the county elections officials, as provided in Section 8120, the Secretary of State shall notify each candidate for ~~partisan~~ *voter-nominated* office *and political party position* of the names, addresses, offices, occupations, and party ~~affiliations~~ *registration status* of all other persons who have filed for the same office *or party position* .

SEC. 46. Section 8124 of the Elections Code is amended to read:

8124. The certified list of candidates sent to each county elections official by the Secretary of State shall show:

(a) The name of each candidate.

(b) The office for which each person is a candidate.

(c) The *political* party *, if any, with which* each ~~person represents,~~ *candidate is registered, or that the candidate designated "no party" registration,* unless the office is nonpartisan.

SEC. 47. Section 8125 of the Elections Code is amended to read:

8125. The certified list of candidates sent to each county elections official by the Secretary of State shall be in substantially the following form:

CERTIFIED LIST OF CANDIDATES FOR NOMINATION

SECRETARY OF STATE

To the County Elections Official of _____ County:

I, _____, Secretary of State, do hereby certify that the following list contains the name of each person for whom nomination papers have been filed in my office and who is entitled to be voted for in the above-named county at the direct primary election to be held on the _____ day of _____, ~~19~~ *20*____, the designation of the office for which each person is a candidate, his or her name being stated ~~under~~ *with* the name of the *political* party *if any, with which* he or she ~~represents~~ *is registered* , except in the case of a nonpartisan office *, and that each person is entitled to be voted for in your county at that election by any registered qualified elector of your county, whether registered with any political party or not. Each candidate who is registered as "no party" is designated as "No Party" on the following list. The listing of a candidate's political party registration status on the ballot is subject to the provisions of Section 7031* .

~~_____ PARTY~~ *VOTER-NOMINATED OFFICES*

STATE (AND DISTRICT) OFFICES

(Title of office)	(Name of candidate)	*(Registered Political Party or No Party)*
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ District

CONGRESSIONAL OFFICES

(Including United States Senator, if any)

_____	_____	_____
_____	_____	_____

_____ District

LEGISLATIVE OFFICES

_____	_____	_____
_____	_____	_____

_____ District
_____ District
~~_____ Party~~

STATE (AND DISTRICT) OFFICES

I further certify the following list contains the name of each person for whom nomination papers have been filed in my office, together with a designation of the office for which each person is a candidate, and that each person is entitled to be voted for in your county at that election by any registered qualified elector of your county, whether registered ~~as intending to affiliate~~ with any political party or not.

NONPARTISAN OFFICES

SUPERINTENDENT OF PUBLIC INSTRUCTION

_____	_____
_____	_____

Dated at Sacramento, California, this _____ day of ____, ~~19~~ *20*___.

(SEAL)

_____

Secretary of State

SEC. 48. Section 8148 of the Elections Code is amended to read:

8148. Not less than 68 days before the general election, the Secretary of State shall deliver to the appropriate county elections official a certificate showing:

(a) The name of every person entitled to receive votes within that county at the general election who has received the nomination *by the voters in a voter choice open primary election* as a candidate for public office pursuant to this chapter.

(b) For each nominee *of the voters* the name of the party ~~that has nominated him or her~~ , if any : *, with which each candidate who has been nominated is registered, or that the nominee is registered as "no party."*

(c) The designation of the public office for which he or she has been nominated.

SEC. 49. Section 8150 of the Elections Code is amended to read:

8150. The certificate of the Secretary of State showing candidates nominated or selected at a primary election, and justices of the Supreme Court and courts of appeal to appear on the general elections ballot, shall be substantially in the following form:

CERTIFICATE OF SECRETARY OF STATE SHOWING CANDIDATES NOMINATED OR SELECTED AT PRIMARY ELECTION

SECRETARY OF STATE

To the County Elections Official of _____ County:

I, _____, Secretary of State, do hereby certify that below are stated the names of those persons entitled to receive votes within your county at the general election who have (1) received ~~partisan~~ nominations *for voter-nominated state elected offices and federal elected offices,* or have been selected as candidates for *nonpartisan* office at the primary election or (2) in the case of justices of the Supreme Court or the courts of appeal, are the justices who are subject to confirmation by the voters at the general election. These nominations and selections are evidenced by the compilation and statement required to be made by me and filed in my office. Set forth along with their respective names, other than the names of justices of the Supreme Court or the courts of appeal, there is shown the candidate's designation of his or her office, profession, vocation or occupation, and there is also shown separately and respectively for each nominee the name of the political party or organization, if any, ~~that has nominated him or her~~ *with which the nominee of the voters is registered,* and the designation of the public office for which he or she is so nominated. *Each candidate who is not registered with a party is designated as "No Party" on the following list. The listing of a candidate's political party registration status on the ballot is subject to the provisions of Section 7031.*

STATE (AND DISTRICT) OFFICES

(Name of candidate)	(Candidate's designation of office, occupation, etc.)	(~~Party~~ *Registered Political Party or No Party*)	(Office)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

_____ District

CONGRESSIONAL OFFICES

_____ _____ _____ _____
_____ _____ _____ _____
_____ _____ _____ _____
_____ District

LEGISLATIVE OFFICES

_____ _____ _____ _____
_____ _____ _____ _____
_____ _____ _____ _____
_____ District

SUPERINTENDENT OF PUBLIC INSTRUCTION

_____ _____ _____
_____ _____ _____
_____ _____ _____

I also certify that at the state conventions that met, according to law, at the State Capitol on the _____ day of _____, 20 ____, the following persons were nominated as electors of President and Vice President of the United States, for the parties respectively hereinafter placed at the head of the column containing their respective names, and you are hereby directed to print the names of the candidates for President and Vice President for whom those electors have pledged themselves to vote, upon the official ballots to be used at the general election, as representing the candidates of their respective parties for that office.

PRESIDENTIAL ELECTORS

_____Party	_____Party
_____President	_____President
_____Vice President	_____Vice President
1 _____	1 _____
2 _____	2 _____
3 _____	3 _____
etc.	etc.

Dated at Sacramento, California, this _____ day of _____, 20____.

(SEAL) _____

Secretary of State

SEC. 50. Section 8300 of the Elections Code is amended to read:

8300. *(a)* A candidate for ~~any public office, including that of~~ presidential elector ~~, for which no nonpartisan candidate has been nominated or elected at any primary election,~~ may be nominated subsequent to or in lieu of a primary election pursuant to this chapter. *A candidate for presidential elector whose name has been on the ballot as a candidate of a party at the direct primary and who has been defeated for that party nomination for presidential elector is ineligible for nomination as an independent candidate for presidential elector.*

(b) The provisions for independent nominations in Part 2 (commencing with Section 8300) of Division 8 shall apply only to any candidate for presidential elector.

SEC. 51. Section 8301 of the Elections Code is repealed:

~~8301. A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her party nomination at the primary election, is ineligible for nomination as an independent candidate.~~

SEC. 52. Section 8302 of the Elections Code is amended to read:

8302. For the purposes of this chapter, Chapter 1 (commencing with Section 8000) of Part 1, and Part 4 (commencing with Section 8800), so far as consistent with this chapter, shall apply to ~~all offices for which~~ *independent* nominations *for presidential electors* ~~are made at the presidential primary and direct primary elections, as well as to elections for any other office to which those provisions would not ordinarily apply~~ .

SEC. 54. Section 8400 of the Elections Code is amended to read:

8400. Nomination papers for ~~a statewide office for which the candidate is to be nominated~~ *presidential electors* shall be signed by voters of the state equal to not less in number than 1 percent of the entire number of registered voters of the state at the time of the close of registration prior to the preceding general election. ~~Nomination papers for an office, other than a statewide office, shall be signed by the voters of the area for which the candidate is to be nominated, not less in number than 3 percent of the entire number of registered voters in the area at the time of the close of registration prior to the preceding general election. Nomination papers for Representative in Congress, State Senator or Assembly Member, to be voted for at a special election to fill a vacancy, shall be signed by voters in the district not less in number than 500 or 1 percent of the entire vote cast in the area at the preceding general election, whichever is less, nor more than 1,000.~~

SEC. 55. Section 8403 of the Elections Code is amended to read:

8403. (a) ~~(1)~~ Nomination papers shall be prepared, circulated, signed, and delivered to the county elections official for examination no earlier than ~~148~~ days before the election and no later than 5 p.m. 88 days before the election.

~~(2) For offices for which no filing fee is required, nomination papers shall be prepared, circulated, signed, and delivered to the county elections official for examination no earlier than~~ 193 days before the election and no later than 5 p.m. 88 days before the election.

(b) ~~All nomination~~ *Nomination* documents ~~that are required to be filed in the office of the Secretary of State~~ shall, within 24 days after being left with the county elections official in compliance with ~~paragraph (1) or (2) of~~ subdivision (a), be forwarded by the county elections official to the Secretary of State, who shall receive and file them.

~~(c) If the total number of signatures submitted to a county elections official for an office entirely within that county does not equal the number of signatures needed to qualify the candidate, the county elections official shall declare the petition void and is not required to verify the signatures. If the district falls within two or more counties, the county elections official shall within two working days report in writing to the Secretary of State the total number of signatures submitted.~~

~~(d)~~ *(c)* If the Secretary of State finds that the total number of signatures submitted in the ~~district or~~ state is less than the minimum number required to qualify the candidate he or she shall within one working day notify in writing the counties involved that they need not verify the signatures.

SEC. 56. Section 8404 of the Elections Code is amended to read:

8404. Each signer of a nomination paper shall sign but one paper for the same office ~~, except that in case two or more persons are to be elected to the same office at the same election, an elector may sign the nomination papers of as many persons as there are persons to be elected to the office, and that act on the part of an elector shall not be deemed in conflict with the signer's statement~~

~~prescribed in this chapter~~ . The signer shall state his or her place of residence, giving his or her street and number, if any.

SEC. 57. Section 8405 of the Elections Code is repealed:

~~8405. Notwithstanding any other provision of law to the contrary, if an independent candidate submits an in-lieu-filing-fee petition pursuant to Section 8106, the county elections official, upon the request of the candidate, shall accept all valid signatures appearing on the candidate's in-lieu-filing-fee petition toward the number of signatures required to be submitted on an in-lieu-filing-fee petition and on a nomination paper.~~

~~If the in-lieu-filing-fee petition does not contain the requisite number of signatures required under Section 8400, the candidate shall be entitled to file, within the time period allowed for filing nomination papers, a nomination paper in order to obtain the requisite number of valid signatures required to be submitted to the elections official pursuant to this chapter.~~

SEC. 58. Section 8409 of the Elections Code is amended to read:

8409. Each candidate ~~or group of candidates~~ shall submit a nomination paper that shall be substantially in the ~~following~~ form *prescribed in subdivision (b) and (c) of Section 8041* .

~~County of _____. Nomination paper of _____, candidate for the office of _____.~~

~~State of California)~~

~~County of _____) ss.~~

~~SIGNER'S STATEMENT~~

~~I, undersigned, am a voter of the County of _____, State of California. I hereby nominate _____, who resides at No. _____, _____ Street, City of _____, County of _____, State of California, as a candidate for the office of _____ to be voted for at the election to be held on the _____ day of _____, 20___. I have not signed the nomination paper of any other candidate for the same office.~~

~~Number Signature Printed Name Residence~~

~~1._____ _____ _____~~

~~2._____ _____ _____~~

~~3._____ _____ _____~~

~~4._____ _____ _____~~

~~5._____ _____ _____~~

~~etc. _____ _____ _____~~

~~CIRCULATOR'S AFFIDAVIT~~

~~I, _____, solemnly swear (or affirm) that I secured signatures in the County of _____ to the nomination paper of _____ as candidate for the office of _____; that the signatures were obtained between _____, 20____ and _____, 20____; that I saw all the signatures on this section of the nomination paper being signed and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.~~

~~My residence address is _____~~

~~(Signed) _____~~

~~Circulator~~

~~Subscribed and sworn to before me this _____ day of _____, 20__.~~

~~(SEAL)~~

~~_____~~

~~Notary Public (or other official)~~

SEC. 59. Section 8451 of the Elections Code is amended to read:

8451. Circulators shall be *residents of the State of California* ~~voters in the district or political subdivision in which the candidate is to be voted on and shall serve only in that district or political subdivision~~ .

SEC. 60. Section 8454 of the Elections Code is amended to read:

8454. ~~(a) Circulators obtaining signatures to the nomination paper of any candidate may, at any time not more than 148 nor less than 88 days prior to the election, obtain signatures to the nomination paper of the candidate.~~

~~(b)~~ Circulators obtaining signatures to the nomination paper of any candidate for presidential elector may, at any time not more than 193 nor less than 88 days prior to the election, obtain signatures to the nomination paper of the candidate.

SEC. 61. Section 8550 of the Elections Code is amended to read:

8550. At least 88 days prior to the election, each *independent* candidate *for presidential elector* shall leave with the officer with whom his or her nomination papers are required to be left, a declaration of candidacy which states all of the following:

(a) The candidate's residence, with street and number, if any.

(b) That the candidate is a voter in the precinct in which he or she resides.

(c) The name of the office for which he or she is a candidate.

(d) That the candidate will not withdraw as a candidate before the election.

(e) That, if elected, the candidate will qualify for the office.

~~(f) That the candidate is not, and was not at any time during the 13 months preceding the general election at which a candidate for the office mentioned in the declaration of candidacy shall be elected, or in the case of an election governed by Chapter 1 (commencing with Section 10700) of Part 6 of Division 10, at any time during the three months immediately preceding the filing of the declaration, registered as affiliated with a political party qualified under Section 5100. The statement required by this subdivision shall be omitted for a candidate for the presidential elector.~~

The name of a candidate shall not be placed on the ballot unless the declaration of candidacy provided for in this section has been properly filed.

SEC. 62. Section 8600 of the Elections Code is amended to read:

8600. *(a)* Every person who desires to be a write-in candidate and have his or her name as written on the ballot of an election counted for a particular office shall file:

~~(a)~~ *(1)* A statement of write-in candidacy that contains the following information:

~~(1)~~ *(A)* Candidate's name.

~~(2)~~ *(B)* Residence address.

~~(3)~~ *(C)* A declaration stating that he or she is a write-in candidate.

~~(4)~~ *(D)* The title of the office for which he or she is running.

~~(5) The party nomination which he or she seeks, if running in a primary election.~~

~~(6)~~ *(E)* The date of the election.

~~(b)~~ *(2)* The requisite number of signatures on the nomination papers, if any, required pursuant to Sections 8062, 10220, 10510 or, in the case of a special district not subject to the Uniform District Election Law (Part 4 (commencing with Section 10500) of Division 10), the number of signatures required by the principal act of the district.

(b) Any person eligible to be a candidate for a particular office may qualify and run as a write-in candidate at any election for that office pursuant to this chapter.

(c) Any person eligible to be a candidate for a particular office may qualify and run as a write-in candidate at any general election for that office, notwithstanding that such person may have run as a candidate or as a write-in candidate for such office in a direct or special voter choice open primary election immediately preceding said general election.

(d) Subparagraphs (B) and (C) of paragraph (1) of subdivision (a) shall not be applicable to a delegate to a national political party convention or to a presidential elector. This subdivision is not intended to restrict the application of any other write-in provisions of this code to any delegate or elector.

SEC. 63. Section 8603 of the Elections Code is amended to read:

8603. Signers of nomination papers for write-in candidates shall be voters in the district or political subdivision in which the candidate is to be voted on. ~~In addition, if the candidate is seeking a party nomination for an office, the signers shall also be affiliated~~ *Signers need not be registered* with ~~the~~ *any political* party ~~whose nomination is sought~~ *to be eligible to sign nomination papers for any write-in candidate for a voter-nominated office .*

SEC. 64. Section 8605 of the Elections Code is amended to read:

8605. No person whose name has been written in upon a ballot for an office at the direct *or special voter choice open* primary *election for a voter-nominated state elected office or federal elected office* may have his or her name ~~placed~~ *listed by the elections official* upon the ballot as a candidate for that office for the ensuing general election unless one of the following is applicable:

(a) At that direct *or special* primary he or she received for that office votes ~~equal in number to 1 percent of all votes cast for the office at the last preceding general election at which the office was filled. In the case of an office that has not appeared on the ballot since its creation, the requisite number of votes shall equal 1 percent of the number of all votes cast for the office that had the least number of votes in the most recent general election in the jurisdiction in which the write-in candidate is seeking office~~ *sufficient to qualify as one of the top two vote-getters pursuant to Section 15451 .*

~~(b) He or she is an independent nominee pursuant to Part 2 (commencing with Section 8300).~~

~~(c)~~ *(b)* He or she has ~~been designated by a party central committee~~ *qualified* to fill a vacancy on the ballot for the general election *pursuant to Section 8806 or 8807 .*

SEC. 65. Section 8802 of the Elections Code is repealed:

~~8802. Any person nominated by a party at the direct primary election for a partisan office may be appointed to fill a vacancy on the general election ballot for any other partisan office, as provided in Section 8806, and in that case his or her appointment shall constitute a vacancy on the general election ballot for the office for which he or she was nominated. The vacancy thus arising shall be filled in the manner prescribed in Section 8806.~~

SEC. 66. Section 8805 of the Elections Code is amended to read:

8805. *(a) Whenever a candidate for nomination for a voter-nominated office at a primary election dies not less than 74 days before the day of the election, the name of the candidate who has died shall be removed from the primary election ballot. The elections official shall declare the nomination process open and shall accept nomination documents from persons seeking to be*

listed as candidates for that office on the primary election ballot in accordance with Section 8025.

(b) Whenever a candidate for nomination for a ~~partisan~~ *voter-nominated* office at a primary election dies ~~on or~~ *less than 74 days* before the day of the election, and a sufficient number of ballots are marked as being voted for him or her to entitle him or her to nomination if he or she had lived until after the *primary* election, a vacancy ~~exists~~ *shall exist* on the general election ballot, which shall be filled in the manner provided in Section 8806 for filling a vacancy caused by the death of a candidate.

SEC. 67. Section 8806 of the Elections Code is amended to read:

8806. ~~Vacancies permitted to be filled may, in the case of legislative offices, be filled by the county central committee or committees of the party in which the vacancy occurs, in the county or counties comprising the legislative district of the deceased candidate. In the case of all other district or state offices requiring party nomination, except congressional offices, the vacancies may be filled by the state central committee of the party.~~

~~Vacancies permitted to be filled may, in the case of congressional offices, be filled by those members of the state central committee of the party who reside in the congressional district in which the vacancy occurs, and who were registered to vote in that district at the time the vacancy occurred, acting together with the members of the county central committee or committees of the party residing in that congressional district.~~

~~References in this section to state and county central committees shall be construed to refer to the newly elected or selected state and county central committees, unless the organizational meetings of those committees are held in January following the general election.~~

(a) If a vacancy occurs at least 68 days prior to the general election among the top two candidates nominated at the direct primary election to be listed on the ballot for the succeeding general election for a voter-nominated office, the name of the candidate receiving at the direct primary election the next highest number of votes shall be listed on the general election ballot to fill the vacancy.

(b) In the event that there is either only one candidate on the ballot for a specific voter-nominated office or there are two candidates who were the only candidates in the preceding voter choice open primary election, and a vacancy occurs 74 days or more prior to the general election as to a candidate who was nominated by the voters for that office, the name of that candidate shall be removed from the general election ballot. The elections official shall declare the nomination process open and shall accept through the 68th day prior to the general election all nomination documents from persons seeking to be listed as candidates for that office on the general election ballot. In the event that any candidate receives a majority of all votes cast for that office in the ensuing general election, that candidate shall be declared elected to the office. In the event that no candidate receives a majority of all votes cast for that office in the general election, the candidates, regardless of party registration, including candidates registered as "no party," who are the top two vote-getters shall be listed as the nominees of the voters on a special run-off election to be held not less than 63 days and not more than 70 days after the general election. The top two vote-getters shall be eligible to be listed on the run-off election ballot regardless of party registration, including candidates registered as "no party." The name of a write-in candidate shall not be listed on the special run-off election ballot

unless the write-in candidate was one of the top two vote-getters in the general election or otherwise qualifies under Section 8605.

(c) In the event that there are two candidates on the ballot for a specific voter-nominated office, and a vacancy occurs less than 74 days prior to the general election as to either candidate nominated by the voters for that office, both names shall be listed on the general election ballot. In the event that the candidate occupying the non-vacant position wins a majority of the vote at the general election, that candidate shall be declared elected to that office. In the event that the candidate occupying the vacant position wins a majority of the vote at the general election, that candidate shall be declared elected to the office. The office to which the candidate occupying the vacant position was elected shall be vacant at the beginning of the term for which he or she was elected. In that event, a special election to fill the vacancy in the office shall be held pursuant to Part 6 (commencing with Section 10700) of Division 10.

(d) In the event that there is only one candidate on the ballot for a specific voter-nominated office, and a vacancy occurs less than 74 days prior to the general election as to the candidate who was nominated by the voters for that office, the name of the candidate occupying the vacant position shall be listed on the general election ballot. In the event that the candidate wins a majority of the vote at the general election, that candidate shall be declared elected to the office. The office to which the candidate was elected shall be vacant at the beginning of the term for which he or she was elected. In that event, a special election to fill the vacancy in the office shall be held pursuant to Part 6 (commencing with Section 10700) of Division 10.

SEC. 68. Section 8811 of the Elections Code is amended to read:

8811. Whenever, upon the death of any candidate, the vacancy created is filled ~~by a party committee~~ *pursuant to Section 8806 or 8807* , a certificate to that effect shall be filed with the officer with whom a declaration of candidacy for that office may be filed, and, upon payment of the filing fee applicable to the office, shall be accepted and acted upon by that officer as in the case of an original declaration certificate.

SEC. 69. Section 10704 of the Elections Code is amended to read:

10704. (a) A special *voter choice open* primary election shall be held in the ~~district~~ *political subdivision* in which the vacancy occurred on the eighth Tuesday or, if the eighth Tuesday is the day of or the day following a state holiday, the ninth Tuesday preceding the day of the special general election at which the vacancy is to be filled. Candidates at the *special voter choice open* primary election shall be nominated *by the voters* in the manner set forth in Chapter 1 (commencing with Section 8000) of Part 1 of Division 8, except that nomination papers shall not be circulated more than 63 days before the primary election, shall be left with the county elections official for examination not less than ~~43~~ *47* days before the primary election, and shall be filed *by the county elections official* with the Secretary of State not less than ~~39~~ *43* days before the primary election.

(b) Notwithstanding Section 3001, applications for absent voter ballots may be submitted not more than 25 days before the primary election, except that Section 3001 shall apply if the special election or special *voter choice open* primary election is consolidated with a statewide election. Applications received by the elections official prior to the 25th day shall not be returned to the sender, but shall be held by the elections official and processed by him or her following the 25th day prior to the election in the same manner as if received at that time.

SEC. 70. Section 10705 of the Elections Code is amended to read:

10705. (a) All candidates shall be listed on one ballot *for a particular office in a special voter choice open primary election* and, *considering any write-in candidates in such election and* except as provided in subdivision (b), if any candidate receives a majority of all votes cast, he or she shall be declared elected ~~,~~ and no special general election shall be held. *This subdivision shall apply to multiple candidates listed on the special voter choice open primary election ballot or where one candidate is listed on such ballot.*

(b) ~~If only one candidate qualifies to have his or her name printed on the special general election ballot, that candidate shall be declared elected, and no special general election shall be held, even if that candidate received less than a majority of the votes cast.~~ *If no candidate in a special voter choice open primary election receives a majority of the votes cast, the provisions of Section 10706 shall govern the holding of a special general election.*

(c) Whenever a candidate for nomination by the voters at a special voter choice open primary election dies after being nominated at said election, a vacancy exists which shall be resolved substantially in a manner consistent with the provisions pertaining to voter-nominated offices set forth in Part 4 (commencing with Section 8800) of Division 8, except that nomination papers shall be left with the county elections official for examination not less than 47 days before the special voter choice open primary election, and shall be filed by the county elections official with the Secretary of State not less than 43 days before the election.

(d) Any ballot, sample ballot, or voter pamphlet prepared in connection with a special primary or special general election shall contain the following statement on each page on which the political party registration status of any candidate is printed, not smaller than 8-point boldface type on each ballot and sample ballot and not smaller than 10-point boldface type in any voter pamphlet, that: "The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters' informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate." In addition, any such ballot, sample ballot, or voter pamphlet shall contain the following statement once in a conspicuous manner, in the same type sizes described in this subdivision, that: "Where the registration status of a candidate has been left blank, the party with which the candidate is registered has not consented to use of party registration status on the ballot."

SEC. 71. Section 10706 of the Elections Code is amended to read:

10706. ~~(a)~~ *If one candidate receives a majority of the votes in a special voter choice open primary election, that candidate shall be declared elected.* If no candidate receives a majority of votes cast *in a special voter choice open primary election as provided in Section 10705* , the ~~name~~ *names* of ~~that~~ *the* ~~candidate~~ *candidates* ~~of each qualified political party~~ who ~~receives the most~~ *are the top two vote-getters,* ~~votes cast for all candidates~~ *regardless of party registration, including candidates registered as "no party,"* ~~of that party~~ *for that office at the special primary election* shall be ~~placed~~ *listed* on the special general election ballot as the ~~candidate of that party~~ *nominees of the voters* . ~~The name of a write-in candidate shall not be placed on the ballot unless he or she also meets the requirements of subdivision (a) of Section 8605.~~

~~(b) In addition to the candidates referred to in subdivision (a), each candidate who has qualified for the ballot by reason of the independent nomination procedure pursuant to Part 2 (commencing with Section 8300) of Division 8 shall be placed on the special general election ballot as an independent candidate. However, if two or more of these candidates are recorded on their affidavits of registration as being affiliated with the same political body, only the candidate with the greatest number of votes shall be placed on the special general election ballot.~~

SEC. 72. Section 12104 of the Elections Code is amended to read:

12104. (a) A notice designating the offices for which candidates are to be nominated shall be in substantially the following form:

NOTICE BY SECRETARY OF STATE OF OFFICES FOR WHICH CANDIDATES ARE TO BE NOMINATED AT THE DIRECT PRIMARY

Secretary of State
Sacramento, _____. ~~19~~ *20*___.

To the County Elections Official of the County of _____:

Notice is hereby given that the offices for which candidates are to be nominated *by the voters* at the primary election to be held on the ____ day of _____, ~~19~~ *20*___, ~~together with the names of the political parties qualified to participate in the election~~ are as follows:

STATE AND DISTRICT OFFICES

_____
_____
_____

CONGRESSIONAL OFFICES

_____
_____
_____

LEGISLATIVE OFFICES

_____
_____
_____

Notice is also hereby given that at the primary election candidates are to be nominated for the following office:

SUPERINTENDENT OF PUBLIC INSTRUCTION

_____
_____
_____

Notice is also hereby given that at the primary election, in the county first above mentioned, candidates are to be nominated for any county offices or judicial offices to which candidates are to be elected at the ensuing general election ~~;~~ .

~~And notice is also hereby given that at the primary election there shall be elected in each county a county central committee for each political party above-named pursuant to Division 7 (commencing with Section 7000) of the Elections Code.~~

(SEAL)

_____
Secretary of State

(b) The notice designating the political parties qualified to participate in this election for ~~nomination of candidates~~ *the purpose of selecting delegates to national political party conventions at which a nominee for President is chosen, or electing members of county central committees, or both,* shall be in substantially the following form:

NOTICE BY SECRETARY OF STATE OF POLITICAL PARTIES QUALIFIED TO PARTICIPATE IN THE DIRECT PRIMARY ELECTION *FOR POLITICAL PARTY POSITIONS*

Secretary of State
Sacramento, _____. ~~19~~ *20*___.
To the County Elections Official of the County of _____:
Notice is hereby given that the political parties qualified to participate in this election for ~~nomination of candidates to partisan offices~~ *the purpose of selecting delegates to national political party conventions at which a nominee for President is chosen, or electing members of county central committees in each county pursuant to Division 7 (commencing with Section 7030), or both,* are as follows:
(SEAL)
_____
Secretary of State

SEC. 73. Section 12108 of the Elections Code is amended to read:

12108. In any case where this chapter requires the publication or distribution of a list of the names of precinct board members, or a portion of the list, the officers charged with the duty of publication shall ascertain the name of the political party, if any, with which each precinct board member is ~~affiliated~~ *registered* , as shown in the affidavit of registration of that person. When the list is published or distributed, there shall be printed the name of the board member's party or an abbreviation of the name to the right of the name, or immediately below the name, of each precinct board member. If a precinct board member is not ~~affiliated~~ *registered* with a political party, the words "No party ~~;~~" ~~"Nonpartisan," or "Decline to state"~~ shall be printed in place of the party name.

SEC. 74. Section 13102 of the Elections Code is amended to read:

13102. (a) All voting shall be by ballot. There shall be provided, at each polling place, at each election at which public officers are to be voted for, but one form of *voter choice open primary* ballot for all candidates for *voter-nominated office, nonpartisan* public office, *and measures,* except that, for ~~partisan~~ primary elections, one form of *party* ballot shall be provided for each qualified political party as well as one form of ~~nonpartisan~~ *voter choice open primary* ballot, in accordance with subdivision (b). *The party ballot and the voter choice open primary ballot shall comply with the provisions of Section 13203.*

(b) At ~~partisan~~ primary elections, each voter not registered ~~as intending to affiliate~~ with any one of the political parties participating in the election shall be furnished only a ~~nonpartisan~~ *voter choice open primary* ballot, unless he or she requests a ballot of a political party and that political party, by party rule duly noticed to the Secretary of State, authorizes a person who has ~~declined to state a party affiliation~~ *designated "no party" on his or her affidavit of registration* to vote the ballot of that political party. The ~~nonpartisan~~ *voter choice open primary* ballot shall contain ~~only~~ the names of all candidates for *voter-nominated offices,* nonpartisan offices and measures to be voted for at the primary election. *Each party ballot shall list the candidates for President or the members to be elected for county central committees of that party, or both.* Each voter registered ~~as~~

~~intending to affiliate~~ with a political party participating in the election shall be furnished ~~only~~ a *party* ballot of the political party with which he or she is registered *,* and ~~the nonpartisan~~ *a* ballot *containing candidates for voter-nominated offices* , ~~both~~ *each* of which shall be printed ~~together as one ballot~~ in the form prescribed by Section 13207. *Each voter shall also be furnished with a Local Elected Offices and Measures ballot if any.*

(c) A political party may adopt a party rule in accordance with subdivision (b) that authorizes a person who has ~~declined to state a party~~ *designated "no party"* ~~affiliation~~ *on his or her affidavit of registration* to vote the ballot of that political party at the next ensuing ~~partisan~~ primary election. The political party shall notify the party chair immediately upon adoption of that party rule. The party chair shall provide written notice of the adoption of that rule to the Secretary of State not later than the 135th day prior to the ~~partisan~~ primary election at which the vote is authorized.

(d) At all times while subdivision (c) of Section 13102 is in effect and at any time when at least one political party chooses in its discretion to comply with the procedures provided for in this section, elections officials shall print in sample voter choice open primary ballots and in voter information guides a list of all political parties that have adopted a party rule as described in subdivision (c) of Section 13102. In addition to this list, the elections officials shall print instructions to voters who have designated "no party" on their affidavits of registration informing them that they have the right at their option to vote, in addition to a voter choice open primary ballot, the ballot of a party shown on the list. The instructions shall specify how such voters may obtain such ballots. This information shall be printed on the first page of sample voter choice open primary ballots and in a prominent manner in voter pamphlets, including a listing in a table of contents and an index if any.

~~(d)~~ *(e)* The county elections official shall maintain a record of which political party's ballot was requested pursuant to subdivision (b), or whether a ~~nonpartisan~~ *voter choice open primary* ballot was requested, by each person who ~~declined to state a party~~ *designated "no party"* ~~affiliation~~ *on his or her affidavit of registration* . The record shall be made available to any person or committee who is authorized to receive copies of the printed indexes of registration for primary and general elections pursuant to Section 2184.

~~(e) This section shall become operative on March 6, 2002.~~

SEC. 75. Section 13103 of the Elections Code is amended to read:

13103. Every ballot ~~shall~~ *that* ~~contain all~~ *contains any* of the following *shall comply with the provisions set forth below* :

(a) The title of each office ~~,~~ *shall be* arranged to conform as nearly as practicable to the plan set forth in this chapter.

(b) The names of all qualified candidates *shall be listed* , except that:

(1) Instead of the names of candidates for delegate to the national conventions, there shall be printed the names of the presidential candidates to whom they are pledged or the names of candidates for chairmen of party national convention delegations.

(2) Instead of the names of candidates for presidential electors, there shall be printed in pairs the names of the candidates of the respective parties for President and Vice President of the United States. These names shall appear under the title "President and Vice President."

(c) The titles and summaries of measures submitted to vote of the voters *shall be listed* .

SEC. 76. Section 13105 of the Elections Code is amended to read:

13105. (a) In the case of candidates for ~~partisan~~ *voter-nominated* office in *a primary election,* a general election, or in a special election to fill a vacancy ~~in the office of Representative in Congress, State Senator, or Member of the Assembly~~ , immediately to the right of and on the same line as the name of the candidate, or immediately below the name, if there is not sufficient space to the right of the name, there shall be printed in eight-point roman ~~lowercase~~ type *either that (1) the candidate is registered as "No Party," or (2)* the name of the qualified political party *that has provided consent as specified in Section 7031* with which the candidate is *registered* ~~affiliated~~ .

(b) If a political party has provided consent as specified in Section 7031, the following words shall be printed on the ballot: "Registered as: (insert name of qualified party, e.g., Democrat, Republican, or Green)." Any candidate using a party registration designation must comply with the requirements of subdivision (a) of Section 8001 and is subject to the political party's consent as specified in Section 7031. Any ballot prepared in connection with an election pursuant to this section shall contain the following statement, not smaller than eight-point boldface type, on each page on which the political party registration status of any candidate is printed, that: "The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters' informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate."

(c) If a candidate has qualified for the ballot as a voter who designated "no party," the words "Registered as: No Party" shall be printed instead of the name of a political party in accordance with the above rules. Any candidate using a "no party" registration designation must comply with the requirements of subdivision (c) of Section 8001.

(d) If a candidate is registered with a political party and that party does not provide consent as specified in Section 7031, the candidate shall not be permitted to have his or her party registration status printed on the ballot. In this case, the space in which the registration status of the candidate would otherwise be printed shall be left blank. Any ballot prepared in connection with an election pursuant to this section shall contain the following statement once in a conspicuous manner, not smaller than eight-point boldface type, that: "Where the registration status of a candidate has been left blank, the party with which a candidate is registered has not consented to use of party registration status on the ballot."

~~(b)~~ *(e)* In the case of candidates for President and Vice President, the name of the party *(e.g., Democrat, Republican, or Reform)* shall appear to the right of and equidistant from the pair of names of these candidates *in the same type size as described in subdivision (a)* .

~~(c) If for a general election any candidate has received the nomination of any additional party or parties, the name(s) shall be printed to the right of the name of the candidate's own party. Party names of a candidate shall be separated by commas. If a candidate has qualified for the ballot by virtue of an independent nomination the word "Independent" shall be printed instead of the name of a political party in accordance with the above rules.~~

SEC. 77. Section 13109 of the Elections Code is amended to read:

13109. *Consistent with other provisions of this code that govern the content of ballots,* ~~The~~ *the* order of precedence of offices *, political party positions, and*

measures on the ballot shall be as listed below for those offices *, political party positions,* and measures that apply to the election for which ~~this~~ *a particular type of* ballot is provided. Beginning in the column to the left:

(a) Under the heading, PRESIDENT AND VICE PRESIDENT: Nominees of the qualified political parties and independent nominees for President and Vice President.

(b) Under the heading, PRESIDENT OF THE UNITED STATES:

(1) Names of the presidential candidates to whom the delegates are pledged.

(2) Names of the chairpersons of unpledged delegations.

(c) Under the heading, COUNTY COMMITTEE: Members of the County Central Committee.

~~(c)~~ *(d)* Under the heading, STATE:

(1) Governor.

(2) Lieutenant Governor.

(3) Secretary of State.

(4) Controller.

(5) Treasurer.

(6) Attorney General.

(7) Insurance Commissioner.

(8) Member, State Board of Equalization.

~~(d)~~ *(e)* Under the heading, UNITED STATES SENATOR: Candidates or nominees to the United States Senate.

~~(e)~~ *(f)* Under the heading, UNITED STATES REPRESENTATIVE: Candidates or nominees to the House of Representatives of the United States.

~~(f)~~ *(g)* Under the heading, STATE SENATOR: Candidates or nominees to the State Senate.

~~(g)~~ *(h)* Under the heading, MEMBER OF THE STATE ASSEMBLY: Candidates or nominees to the Assembly.

~~(h) Under the heading, County Committee: Members of the County Central Committee.~~

(i) Under the heading, JUDICIAL:

(1) Chief Justice of California.

(2) Associate Justice of the Supreme Court.

(3) Presiding Justice, Court of Appeal.

(4) Associate Justice, Court of Appeal.

(5) Judge of the Superior Court.

(6) Marshal.

(j) Under the heading, SCHOOL:

(1) Superintendent of Public Instruction.

(2) County Superintendent of Schools.

(3) County Board of Education Members.

(4) College District Governing Board Members.

(5) Unified District Governing Board Members.

(6) High School District Governing Board Members.

(7) Elementary District Governing Board Members.

(k) Under the heading, COUNTY:

(1) County Supervisor.

(2) Other offices in alphabetical order by the title of the office.

(*l*) Under the heading, CITY:

(1) Mayor.

(2) Member, City Council.

(3) Other offices in alphabetical order by the title of the office.

(m) Under the heading, DISTRICT: Directors or trustees for each district in alphabetical order according to the name of the district.

(n) Under the heading, MEASURES SUBMITTED TO THE VOTERS and the appropriate heading from subdivisions (a) through (m), above, ballot measures in the order, state through district shown above, and within each jurisdiction, in the order prescribed by the official certifying them for the ballot.

(o) In order to allow for the most efficient use of space on the ballot in counties that use a voting system, as defined in Section 362, the county elections official may vary the order of subdivisions (j), (k), (*l*), (m), and (n) as well as the order of offices within these subdivisions. However, the office of Superintendent of Public Instruction shall always precede any school, county, or city office, and state measures shall always precede local measures.

SEC. 78. Section 13110 of the Elections Code is amended to read:

13110. The group of names of candidates for any ~~partisan~~ *voter-nominated* office or nonpartisan office shall be the same on the ballots of all voters entitled to vote for candidates for that office~~, except that in partisan~~ . *In direct* primary elections *involving (a) in any year which is evenly divisible by the number four, delegates to national political party conventions at which a nominee for President is chosen or (b) nominees for the party's county central committee members* , the names of ~~candidates for nomination to partisan office~~ *such candidates for President or members, or both,* shall appear only on the *party* ballots of the *respective* political party~~, the nomination of which they seek~~ .

SEC. 79. Section 13111 of the Elections Code is amended to read:

13111. *Consistent with other provisions of this code that govern the content of ballots,* ~~Candidates~~ *candidates* for each office *and political party position* shall be printed on the ballot in accordance with the following rules:

(a) The names of presidential candidates to whom candidates for delegate to the national convention are pledged, and the names of chairpersons of groups of candidates for delegate expressing no preference, shall be arranged on the primary election ballot by the Secretary of State by the names of the candidates in accordance with the randomized alphabet as provided for in Section 13112 in the case of the ballots for the First Assembly District. Thereafter, for each succeeding Assembly district, the name appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(b) The names of the pairs of candidates for President and Vice President shall be arranged on the general election ballot by the Secretary of State by the names of the candidates for President in accordance with the randomized alphabet as provided for in Section 13112 in the case of the ballots for the First Assembly District. Thereafter, for each succeeding Assembly district, the pair appearing first in the last preceding Assembly district shall be placed last, the order of the other pairs remaining unchanged.

(c) In the case of all other offices, the candidates for which are to be voted on throughout the state, the Secretary of State shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112 for the First Assembly District. Thereafter, for each succeeding Assembly district, the name appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(d) If the office is that of Representative in Congress or member of the State Board of Equalization, the Secretary of State shall arrange the names of candidates for the office in accordance with the randomized alphabet as provided for in Section 13112 for that Assembly district that has the lowest number of all the Assembly districts in which candidates are to be voted on. Thereafter, for each succeeding Assembly district in which the candidates are to be voted on, the names appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(e) If the office is that of State Senator or Member of the Assembly, the county elections official shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112, unless the district encompasses more than one county, in which case the arrangement shall be made pursuant to subdivision (i).

(f) If the office is to be voted upon wholly within, but not throughout, one county, as in the case of municipal, district, county supervisor, and county central committee offices, the official responsible for conducting the election shall determine the order of names in accordance with the randomized alphabet as provided for in Section 13112.

(g) If the office is to be voted on throughout a single county, and there are not more than four Assembly districts wholly or partly in the county, the county elections official shall determine the order of names in accordance with the randomized alphabet as provided for in Section 13112 for the first supervisorial district. Thereafter, for each succeeding supervisorial district, the name appearing first for each office in the last preceding supervisorial district shall be placed last, the order of the other names remaining unchanged.

(h) If there are five or more Assembly districts wholly or partly in the county, an identical procedure shall be followed, except that rotation shall be by Assembly district, commencing with the Assembly district which has the lowest number.

(i) Except as provided in subdivision (d) of Section 13112, if the office is that of State Senator or Member of the Assembly, and the district includes more than one county, the county elections official in each county shall conduct a drawing of the letters of the alphabet, pursuant to the same procedures specified in Section 13112. The results of the drawing shall be known as a county randomized ballot and shall be used only to arrange the names of the candidates when the district includes more than one county.

(j) If the office is that of Justice of the California Supreme Court or a court of appeal, the appropriate elections officials shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112. However, the names of the judicial candidates shall not be rotated among the applicable districts.

(k) All candidates who are listed on ballots and sample ballots, other than party ballots, shall not be arranged or grouped by political party registration status or any other category, except the office sought, and shall be organized randomly as provided in this section.

SEC. 80. Section 13203 of the Elections Code is amended to read:

13203. Across the top of the ballot shall be printed in heavy-faced gothic capital type not smaller than 30-point, the words "OFFICIAL BALLOT." However, if the ballot is no wider than a single column, the words "OFFICIAL BALLOT" may be as small as 24-point. Beneath this heading, in the case of a ~~partisan~~ primary election, shall be printed in 18-point boldface gothic capital

type the official party designation , *coupled with the word "BALLOT, (e.g., LIBERTARIAN PARTY BALLOT)"* or the words "~~NONPARTISAN~~ *VOTER CHOICE OPEN PRIMARY* BALLOT" as applicable. Beneath the heading line or lines, there shall be printed, in boldface type as large as the width of the ballot makes possible, the number of the congressional, Senate, and Assembly district, the name of the county in which the ballot is to be voted, and the date of the election. *In the case of a separate ballot printed as provided in subdivision (b) of Section 359.3 and Section 13230, the words "LOCAL ELECTED OFFICES AND MEASURES BALLOT" shall be printed in 18-point boldface gothic capital type beneath the words "OFFICIAL BALLOT" in the heading.*

SEC. 81. Section 13206 of the Elections Code is amended to read:

13206. (a) On ~~the partisan~~ *each* ballot used in a direct primary election, immediately below the instructions to voters, there shall be a box one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the ~~partisan~~ *voter choice open primary* ballot and shall be set directly above these columns. Within the box shall be printed in 24-point boldface gothic capital type the words "~~Partisan~~ *Voter-Nominated* Offices."

(b) The same style of box described in subdivision (a) shall also appear over the columns of the nonpartisan part of the ballot and within the box in the same style and point size of type shall be printed "Nonpartisan Offices."

(c) Any ballot prepared in connection with a direct primary election shall contain the following statement, not smaller than eight-point boldface type, on each page of a ballot on which the political party registration status of any candidate is printed, that: "The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters' informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate." In addition, any such ballot shall contain the following statement once in a conspicuous manner, not smaller than eight-point boldface type, that: "Where the registration status of a candidate has been left blank, the party with which the candidate is registered has not consented to use of party registration status on the ballot."

SEC. 82. Section 13207 of the Elections Code is amended to read:

13207. (a) There shall be printed on the ballot in parallel columns all of the following:

(1) The respective offices.

(2) The names of candidates with sufficient blank spaces to allow the voters to write in names not printed on the ballot.

(3) Whatever measures have been submitted to the voters.

(b) In the case of a *party* ballot which is intended for use in a ~~party~~ primary ~~and~~ which ~~carries~~ *lists* both ~~partisan~~ *candidates for president and members to be elected to a county central committee* ~~offices and nonpartisan offices~~ , a vertical solid black line shall divide the columns containing ~~partisan offices,~~ *candidates for President* on the left, from the columns containing ~~nonpartisan offices~~ *county central committee member candidates* on the right.

(c) In the case of a voter choice open primary ballot, a vertical solid black line shall divide the columns containing candidates for voter-nominated offices, on the left, from the columns containing candidates for nonpartisan offices, to the right of the columns containing the candidates for voter-nominated offices.

(d) Any measures that are to be submitted to the voters *on a ballot* shall be printed in one or more parallel columns to the right of the columns containing the names of candidates and shall be of sufficient width to contain the title and summary of each measure. To the right of each title and summary shall be printed, on separate lines, the words "Yes" and "No."

~~(c)~~ *(e)* The standard width of columns ~~containing partisan and nonpartisan offices~~ shall be three inches, but ~~a~~ *an* elections official may vary the width of these columns up to 10 percent more or less than the three-inch standard. However, the column containing presidential and vice presidential candidates may be as wide as four inches.

(f) Any ballot prepared in connection with a general election shall contain the following statement, not smaller than eight-point boldface type, on each page on which the political party registration status of any candidate is printed, that: "The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters' informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate." In addition, the ballot shall contain the following statement once in a conspicuous manner, not smaller than eight-point boldface type, that: "Where the registration status of a candidate has been left blank, the party with which the candidate is registered has not consented to use of party registration status on the ballot."

SEC. 83. Section 13208 of the Elections Code is amended to read:

13208. (a) In the right-hand margin of each column light vertical lines shall be printed in such a way as to create a voting square after the name of each candidate for ~~partisan~~ *voter-nominated* office, *for* nonpartisan office (except for justice of the Supreme Court or court of appeal), *for President and Vice President, for county central committee member candidates,* or for chairman of a group of candidates for delegate to a national convention who express no preference for a presidential candidate. In the case of Supreme Court or appellate justices and in the case of measures submitted to the voters, the lines shall be printed so as to create voting squares to the right of the words "Yes" and "No." The voting squares shall be used by the voters to express their choices as provided for in the instruction to voters.

(b) The standard voting square shall be at least three-eighths of an inch square but may be up to one-half inch square. Voting squares for measures may be as tall as is required by the space occupied by the title and summary.

SEC. 84. Section 13217 of the Elections Code is amended to read:

13217. The number on each ballot shall be the same as that on the corresponding stub, and the ballots and stubs shall be numbered consecutively in each county, or the ballots and stubs may be numbered consecutively within each combination of congressional, senatorial, and Assembly districts in each county. ~~In a partisan primary election, the sequence of numbers on the official ballots and stubs for each party within each county, or within each political subdivision in each county, shall begin with the number 1.~~

SEC. 85. Section 13230 of the Elections Code is amended to read:

13230. (a) If the county elections official determines that, due to the number of candidates and measures that must be printed on the ballot, the ballot will be larger than may be conveniently handled, the county elections official may provide that a ~~nonpartisan~~ *separate* ballot *, containing non statewide nonpartisan offices and non statewide measures for submission to the voters,*

shall be given to each ~~partisan~~ voter, together with his or her ~~partisan~~ ballot~~, and that the material appearing under the heading "Nonpartisan Offices" on partisan ballots, as well as the heading itself, shall be omitted from the partisan ballots~~ . *Statewide nonpartisan offices and statewide measures shall at all times be included on the voter choice open primary ballot or general election ballot. The separate ballot, if any, shall be titled with the heading: "LOCAL ELECTED OFFICES AND MEASURES BALLOT." All material appearing regarding non statewide measures shall be omitted from the voter choice open primary ballots or general election ballots and shall be placed on separate ballots under the heading of "Non Statewide Measures." In addition to the voter choice open primary ballots and the separate ballots, a voter shall be given a separate party ballot, as defined in Section 337, which the voter is entitled to receive pursuant to subdivision (b) of Section 13102.*

(b) If the county elections official so provides, the procedure prescribed for the handling and canvassing of ballots shall be modified to the extent necessary to permit the use of ~~two~~ *three* ballots by ~~partisan~~ voters. The county elections official may, in this case, order the ~~second ballot~~ *local elected offices and measures ballots* to be printed on paper of a different tint, and assign to those ballots numbers higher than those assigned to the *party ballots containing political party positions or to the voter choice open primary* ballots containing ~~partisan~~ *voter-nominated* offices.

(c) ~~"Partisan voters," for~~ *For* purposes of this section, *voters entitled to vote a "Party Ballot"* includes persons who have ~~declined to state a party affiliation~~ *designated "no party" on their affidavits of registration* , but who have chosen to vote the ballot of a political party as authorized by that party's rules duly noticed to the Secretary of State.

SEC. 86. Section 13232 of the Elections Code is repealed:

~~13232. Notwithstanding any other provision of law, for the purpose of conducting the Democratic Party Presidential Primary Election, the Secretary of State may, if it is reasonably necessary to accommodate the limitations of a voter system or vote tabulating device, authorize the county elections officials to do any or all of the following:~~

~~(a) Vary the order of any office or measure listed in Section 13109, with the exception of President of the United States, United States Representative, State Senator, Member of the Assembly, and judicial offices.~~

~~(b) Place any office listed in Section 13109 on a second ballot, with the exception of United States Representative, State Senator, Member of the State Assembly, judicial offices, County Superintendent of Schools, County Board of Education Members, and county officers.~~

~~(c) Place any ballot measure, other than a state measure, on a separate ballot.~~

SEC. 87. Section 13261 of the Elections Code is amended to read:

13261. (a) Each ballot card shall have two stubs attached. The stubs shall be separated from the ballot card and from each other by perforated lines so that they may be readily detached.

(b) (1) One stub shall have the serial ballot number printed on it, and shall be detached from the remainder of the ballot before it is handed to the voter.

(2) The second stub shall have printed on it all of the following:

(A) The same ballot serial number.

(B) The words "This ballot stub shall be removed and retained by the voter."

(C) The words "OFFICIAL BALLOT" in uppercase boldface type no smaller than 12 point.

(D) In primary elections, the party name *coupled with the word "BALLOT,"* e.g., ~~"Democratic Party,"~~ *"DEMOCRATIC PARTY BALLOT,"* ~~or~~ the words ~~"Nonpartisan Ballot,"~~ *"VOTER CHOICE OPEN PRIMARY BALLOT," or the words "LOCAL ELECTED OFFICES AND MEASURES BALLOT,"* as applicable.

(E) The name of the county.

(F) The date of the election.

(G) Where not otherwise provided, instructions to the voter on how to mark the ballot with the marking device, how to vote for a candidate whose name is not printed on the ballot, and how to secure an additional ballot card if the ballot card is spoiled or marked erroneously.

(3) If the information listed in subparagraphs (A) to (G), inclusive, of paragraph (2) must also appear in one or more languages other than English under the provisions of the federal Voting Rights Act of 1965 as extended by Public Law 94-73, and there is insufficient room for all the information to be set forth in all the required languages while at the same time appearing in a type size sufficiently large to be readable, the official in charge of the election may delete information set forth in subparagraphs (E) and (F) of paragraph (2), in the order listed, until there is sufficient room.

(c) In addition to the instructions to voters printed on the ballot or ballot stub, there shall be displayed in each voting booth instructions to voters substantially in the same form and wording as appears on paper ballots.

(d) Precinct numbers may also be placed on the ballot.

SEC. 88. Section 13262 of the Elections Code is amended to read:

13262. (a) The ballot shall contain the same material as to candidates and measures, and shall be printed in the same order as provided for paper ballots, and may be arranged in parallel columns on one or more ballot cards as required, except that the column in which the voter marks his or her choices may be at the left of the names of candidates and the designation of measures.

(b) If there are a greater number of candidates for an office or for ~~a party~~ nomination *by the voters in a voter choice open primary election* for an office than the number whose names can be placed on one pair of facing ballot pages, a series of overlaying pages printed only on the same, single side shall be used, and the ballot shall be clearly marked to indicate that the list of candidates for the office is continued on the following page or pages. If the names of candidates for the office are not required to be rotated, they shall be rotated by groups of candidates in a manner so that the name of each candidate shall appear on each page of the ballot in approximately the same number of precincts as the names of all other candidates.

(c) Space shall be provided on the ballot or on a separate write-in ballot to permit voters to write in names not printed on the ballot when authorized by law. The size of the voting square and the spacing of the material may be varied to suit the conditions imposed by the use of ballot cards, provided the size of the type is not reduced below the minimum size requirements set forth in Chapter 2 (commencing with Section 13100).

(d) The statement of measure submitted to the voters may be abbreviated if necessary on the ballot, provided that each and every statement of measures on that ballot is abbreviated. Abbreviation of matters to be voted on throughout the state shall be composed by the Attorney General.

SEC. 89. Section 13300 of the Elections Code is amended to read:

13300. (a) By at least 29 days before the primary, each county elections official shall prepare *a* separate sample ~~ballots~~ *party ballot* for each political party , ~~and~~ a separate sample ~~nonpartisan~~ *voter choice open primary* ballot, *and, if applicable, a local elected offices and measures ballot,* placing thereon ~~in~~ *as applicable for* each ~~case~~ *respective type of ballot* in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names of all candidates *seeking voter-nominated offices, political party positions, or statewide nonpartisan offices* for whom nomination papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary election *, local nonpartisan offices, and measures . The elections official shall list on ballots and sample ballots, for all voter-nominated offices, the names of all candidates organized randomly as provided in Chapter 2 (commencing with Section 13100) of Division 13.*

(b) All candidates who are listed on ballots and sample ballots, other than party ballots, shall not be arranged or grouped by political party registration status or any other category, except the office sought, and shall be organized randomly as provided in Chapter 2 (commencing with Section 13100) of Division 13.

~~(b)~~ *(c)* The sample ~~ballot~~ *ballots* shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ~~ballot~~ *ballots* .

~~(c)~~ *(d)* One sample *voter choice open primary ballot, one sample party* ballot of the *political* party ~~to~~ *with* which the voter ~~belongs,~~ *is registered, and, if applicable, one sample local elected offices and measures ballot,* ~~as evidenced by his or her registration,~~ shall be mailed to each voter entitled to vote at the primary , who registered at least 29 days prior to the election , not more than 40 nor less than 10 days before the election. A ~~nonpartisan~~ sample *voter choice open primary* ballot *and if applicable a sample local elected offices and measures ballot,* shall be so mailed to each voter who is not registered ~~as intending to affiliate~~ with any of the parties participating in the primary election, provided that on election day any *such* person may, upon request, vote the *party* ballot of a political party if authorized by the party's rules, duly noticed to the Secretary of State.

(e) The county elections official may prepare sample ballot pamphlets in a manner that maximizes printing and mailing efficiencies, such as the combining of a separate political party ballot type with a separate voter choice open primary ballot type in one sample ballot pamphlet, provided that the separate nature of each ballot type is clearly delineated and preserved.

(f) Any sample ballot prepared in connection with a direct primary election shall contain the following statement, not smaller than eight-point boldface type, on each page on which the political party registration status of any candidate is printed, that: "The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters' informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate." In addition, the sample ballot shall contain the following statement once in a conspicuous manner, not smaller than eight-point boldface type, that: "Where the registration status of a

candidate has been left blank, the party with which the candidate is registered has not consented to use of party registration status on the ballot."

SEC. 90. Section 13302 of the Elections Code is amended to read:

13302. The county elections official shall forthwith submit the sample *party* ballot of each political party to the chairperson of the county central committee of that party, and shall mail a copy *of the respective ballot* to each candidate for whom nomination papers have been filed in his or her office or whose name has been certified to him or her by the Secretary of State, to the post office address as given in the nomination paper or certification. The county elections official shall post a copy of each sample ballot in a conspicuous place in his or her office.

SEC. 91. Section 13312 of the Elections Code is amended to read:

13312. Each voter's pamphlet prepared pursuant to Section 13307 shall contain a statement in the heading of the first page in heavy-faced gothic type, not smaller than 10-point, that: (a), the pamphlet does not contain a complete list of candidates and that a complete list of candidates appears on the sample ballot (if any candidate is not listed in the pamphlet) ~~, and that~~ *;* (b), each candidate's statement in the pamphlet is volunteered by the candidate, and (if printed at the candidate's expense) is printed at his or her expense ~~.~~ *; (c), explains in a clear manner to the voter the concept of a voter choice open primary involving voter-nominated offices; (d), "The designation of the political party registration status on the ballot of a candidate for a voter-nominated office is for the voters' informational purposes only, and does not indicate that the political party with which a candidate may be registered has nominated that candidate or that the party necessarily agrees with or endorses that candidate;" and (e) "Where the registration status of the candidate has been left blank, the party with which the candidate is registered has not consented to use of party registration status on the ballot."*

SEC. 92. Section 14102 of the Elections Code is amended to read:

14102. (a) (1) For each statewide election, the elections official shall provide a sufficient number of official ballots in each precinct to reasonably meet the needs of the voters in that precinct on election day using the precinct's voter turnout history as the criterion, but in no case shall this number be less than 75 percent of registered voters in the precinct, and for absentee and emergency purposes shall provide the additional number of ballots that may be necessary.

(2) The number of party ballots to be furnished to any precinct for a primary election shall be computed from the number of voters registered in that precinct ~~as intending to affiliate~~ with a party, and the number of ~~nonpartisan~~ *voter choice open primary* ballots to be furnished to any precinct shall be computed from the number of voters registered in that precinct *with a party or as "no party."* ~~without statement of intention to affiliate with any of the parties participating in the primary election.~~

(b) For all other elections, the elections official shall provide a sufficient number of official ballots in each precinct to reasonably meet the needs of the voters in that precinct on election day, using the precinct's voter turnout history as the criterion, but in no case shall this number be less than 75 percent of the number of registered voters in the precinct, and for absentee and emergency purposes shall provide the additional number of ballots that may be necessary.

SEC. 93. Section 15104 of the Elections Code is amended to read:

15104. (a) The processing of absentee ballot return envelopes, and the processing and counting of absentee ballots shall be open to the public, both prior to and after the election.

(b) Any member of the county grand jury, and at least one member each of the Republican county central committee, the Democratic county central committee, and of any other party with a candidate *registered with the party* on the ballot, and any other interested organization, shall be permitted to observe and challenge the manner in which the absentee ballots are handled, from the processing of absentee ballot return envelopes through the counting and disposition of the ballots.

(c) The elections official shall notify absentee voter observers and the public at least 48 hours in advance of the dates, times, and places where absentee ballots will be processed and counted.

(d) Absentee voter observers shall be allowed sufficiently close access to enable them to observe and challenge whether those individuals handling absentee ballots are following established procedures, including all of the following:

(1) Verifying signatures and addresses by comparing them to voter registration information.

(2) Duplicating accurately any damaged or defective ballots.

(3) Securing absentee ballots to prevent any tampering with them before they are counted on election day.

(e) No absentee voter observer shall interfere with the orderly processing of absentee ballot return envelopes or processing and counting of absentee ballots, including touching or handling of the ballots.

SEC. 94. Section 15151 of the Elections Code is amended to read:

15151. (a) The elections official shall transmit the semifinal official results to the Secretary of State in the manner and according to the schedule prescribed by the Secretary of State prior to each election, for the following:

(1) All candidates voted for statewide office.

(2) All candidates voted for the following offices:

(A) State Assembly.

(B) State Senate.

(C) Member of the United States House of Representatives.

(D) Member of the State Board of Equalization.

(E) Justice of the Court of Appeals.

(3) All persons voted for at the presidential primary or for electors of President and Vice President of the United States. The results at the presidential primary for candidates for President to whom delegates of a political party are pledged shall be reported according to the number of votes each candidate received from all voters and separately according to the number of votes each candidate received from voters ~~affiliated~~ *registered* with each political party qualified to participate in the presidential primary election, and from voters who have ~~declined to affiliate with~~ *designated "no party" instead of* a qualified political party *on their affidavits of registration* . The elections official shall adopt procedures required to tabulate ~~the~~ *party* ballots separately by party ~~affiliation~~ *registration* .

(4) Statewide ballot measures.

(b) The elections official shall transmit the results to the Secretary of State at intervals no greater than two hours, following commencement of the semifinal official canvass.

(c) Except for the results specified in paragraph (3) of subdivision (a), the elections official shall tabulate and transmit all election results specified in this section according to the actual numerical vote count according to the appropriate political subdivision, such as precinct or district, or according

to the type of ballot, such as absentee ballot. The elections official shall not, for any purposes whatsoever, otherwise tabulate votes separately by any other categories including party registration.

SEC. 95. Section 15375 of the Elections Code is amended to read:

15375. *(a)* The elections official shall send to the Secretary of State within 35 days of the election in the manner requested one complete copy of all results as to all of the following:

~~(a)~~ *(1)* All candidates voted for statewide office.

~~(b)~~ *(2)* All candidates voted for the following offices:

~~(1)~~ *(A)* Member of the Assembly.

~~(2)~~ *(B)* Member of the Senate.

~~(3)~~ *(C)* Member of the United States House of Representatives.

~~(4)~~ *(D)* Member of the State Board of Equalization.

~~(5)~~ *(E)* Justice of the Court of Appeal.

~~(6)~~ *(F)* Judge of the superior court.

~~(7)~~ *(G)* Judge of the municipal court.

~~(c)~~ *(3)* All persons voted for at the presidential primary. The results for all persons voted for at the presidential primary for delegates to national conventions shall be canvassed and shall be sent within 28 days after the election. The results at the presidential primary for candidates for President to whom delegates of a political party are pledged shall be reported according to the number of votes each candidate received from all voters and separately according to the number of votes each candidate received from voters ~~affiliated~~ *registered* with each political party qualified to participate in the presidential primary election, and from voters who have ~~declined to affiliate with~~ *designated "no party" instead of* a qualified political party *on their affidavits of registration* .

~~(d)~~ *(4)* The vote given for persons for electors of President and Vice President of the United States. The results for presidential electors shall be endorsed "Presidential Election Returns."

~~(e)~~ *(5)* All statewide measures.

(b) Except for results specified in paragraphs (3) and (4) of subdivision (a), the elections official shall tabulate and transmit all election results specified in this section according to the actual numerical vote count according to the appropriate political subdivision, such as precinct or district, or according to the type of ballot, such as absentee ballot. The elections official shall not, for any purposes whatsoever, otherwise tabulate votes separately by any other categories including party registration.

SEC. 96. Section 15450 of the Elections Code is amended to read:

15450. ~~A~~ *Except as provided in Section 15451, a* plurality of the votes given at any election shall constitute a choice where not otherwise directed in the California Constitution, provided that it shall be competent in all charters of cities, counties, or cities and counties framed under the authority of the California Constitution to provide the manner in which their respective elective officers may be elected and to prescribe a higher proportion of the vote therefor.

SEC. 97. Section 15451 of the Elections Code is amended to read:

15451. *(a)* The ~~person~~ *candidates, regardless of party registration, including candidates registered as "no party"* who ~~receives the highest number of votes~~ *are the top two vote-getters* at a *direct voter choice open* primary election *for a voter-nominated office* ~~as the candidate of a political party for the nomination to an office is~~ *shall be* the ~~nominee~~ *nominee(s)* of ~~that party~~ *the voters for that office* at the ensuing general election. *Under no circumstances*

shall any candidate be elected outright to any office under this section in a direct voter choice open primary election. In the event that there is only one candidate listed on the direct voter choice open primary election ballot for nomination to any voter-nominated office, then such candidate shall be listed as the nominee of the voters for a vote at the ensuing general election. For purposes of this section, the word "plurality" shall encompass the choice by the voters of the single candidate or the top two vote-getting candidates, regardless of party registration, including candidates registered as "no party," who are specified as being entitled to be listed on a general election ballot as a result of being nominated by the voters at a direct voter choice open primary election.

(b) The candidate who receives a majority of the votes cast at a special voter choice open primary election, as provided in Section 10705, or the candidate who receives a majority of the votes cast at a special general election, as provided in Section 10706, shall be elected to the particular office at that special election.

(c) The candidates who are the top two vote-getters at a special voter choice open primary election, regardless of party registration, including candidates registered as "no party," where no candidate has received a majority of the votes cast at such election as provided in subdivision (b), shall be the nominees of the voters. These candidates shall be listed on the ballot at the ensuing special general election in accordance with Section 10706.

SEC. 98. Section 15452 of the Elections Code is amended to read:

15452. The ~~person~~ *candidate* who receives a plurality of the votes cast for any office is elected or nominated to that office in any election, except:

(a) An election for which different provision is made by any city or county charter.

(b) A municipal election for which different provision is made by the laws under which the city is organized.

(c) The election of local officials in primary elections as specified in Article 8 (commencing with Section 8140) of Part 1 of Division 8.

(d) The nomination of any candidate by the voters in any direct voter choice open primary election for voter-nominated offices, as provided in subdivision (a) of Section 15451.

(e) The election of any candidate by the voters in any special voter choice open election for voter-nominated offices, as provided in subdivision (b) of Section 15451.

(f) The nomination of any candidate by the voters in any special voter choice open primary election for voter-nominated offices, as provided in subdivision (c) of Section 15451.

SEC. 99. Section 19301 of the Elections Code is amended to read:

19301. A voting machine shall provide in the general election for grouping under the name of the office to be voted on, all the candidates for the office with the designation of the parties, if any, ~~by~~ *with* which ~~they were~~ *each candidate is* respectively ~~nominated~~ *registered* . The designation may be by usual or reasonable abbreviation of party names *for all candidates for all offices, with the words "Registered as:" also appearing immediately before each party name for all candidates for voter-nominated offices. Any candidate using a political party registration designation must comply with the requirements of subdivision (a) of Section 8001 and is subject to the political party's consent as specified in Section 7031. If a candidate has qualified for the ballot as a voter who designates "no party," the words "Registered as: No Party" shall be printed instead of the name of a political party in accordance with the above rules. Any candidate using*

a registration designation of "no party" must comply with the requirements of subdivision (c) of Section 8001. If a candidate is registered with a political party and that party does not provide consent as specified in Section 7031, the candidate shall not be permitted to have his or her party registration status printed on the ballot. In this case, the space in which the registration status of a candidate would otherwise be printed shall be left blank.

SEC. 100. Broad Construction.

This act shall be broadly construed and applied in order to fully promote its underlying purposes and to be consistent with the United States Constitution and the California Constitution. If any provision of this act conflicts directly or indirectly with any other provision of law, or any other statute previously enacted by the Legislature, those other provisions shall be null and void to the extent that they are inconsistent with this act, and are hereby repealed.

SEC. 101. Amendment of Act.

(a) Except as provided in subdivisions (b) and (c), no provision of this act may be amended except by a constitutional amendment or statute, as appropriate, that becomes effective only when approved by the electorate.

(b) The Legislature may amend Section 2150, subdivision (a) of Section 2151, 2152, 2154, 2155, 2185, 2187, 3006, 3007.5, 3205, 5000, 5100, subdivisions (a) and (b) of Section 8001, 8022, 8025, subdivisions (a) and (b) of Section 8040, 8041, subdivision (a) of Section 8062, 8106, 8121, 8124, 8125, 8148, 8150, 8300, 8302, 8400, 8403, 8404, 8409, 8451, 8454, 8811, 12104, 12108, 13103, subdivision (e) of Section 13105, 13109, subdivisions (a) through (j) of Section 13111, 13203, subdivisions (a) and (b) of Section 13206, subdivisions (a) through (e) of Section 13207, 13208, 13217, 13230, 13261, 13262, subdivisions (a), (c), and (d) of Section 13300, 13302, 14102, 15104, subdivisions (a) and (b) of Section 15151, subdivision (a) of Section 15375, and 19301 of the Elections Code, to effect technical changes only and that are not inconsistent with the purposes of this act.

(c) Nothing in this act is intended to and shall not be construed to alter or to limit the existing power of the Legislature to alter existing law governing the means by which political parties either select delegates to national political party conventions at which a party nominee for President is chosen, or elect or select members of political party state and county central committees, or both.

SEC. 102. Conflicting Ballot Measures.

(a) In the event that this measure and another measure or measures relating to direct primary elections, special primary elections, or general elections in this state shall appear on the same statewide election ballot, the provisions of the other measures that would affect in whole or in part the field of such primary elections or general elections, or both, shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety and the provisions of the other measure or measures shall be null and void in their entirety. In the event that the other measure or measures shall receive a greater number of affirmative votes, the provisions of this measure shall take effect to the extent permitted by law.

(b) If this measure is approved by voters but superseded by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

SEC. 103. Severability.

If any provision of this act or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect in the absence of the invalid provision or application. To this end, the provisions of this act are severable.

Number on ballot

67. **Emergency Medical Services. Funding. Telephone Surcharge.**

[Submitted by the initiative and rejected by electors November 2, 2004.]

PROPOSED LAW

SECTION 1. *Findings and Declaration of Purposes*

(a) Access to hospital trauma and emergency medical services in California is in critical condition. The ability of hospitals and physicians to meet the demand for trauma and emergency services, including necessary follow-up hospital care to patients admitted through emergency rooms, is strained to the breaking point. The lack of adequate urgent care alternatives, particularly for those without insurance or the ability to pay for medical services, puts added stress on hospital emergency departments. Patients often wait for hours in overcrowded emergency rooms for treatment, and seriously injured patients are increasingly being diverted past the nearest hospitals.

(b) The 911 emergency telephone system serves as a lifeline for countless Californians each year. Californians deserve a high quality system that ensures that each emergency call is answered immediately.

(c) Firefighters and paramedics are the first on the scene to provide medical care to accident or disaster victims. The medical care they provide can mean the difference between life and death. They must be appropriately trained and equipped to respond to medical emergencies.

(d) Emergency physicians and on-call physician specialists provide hundreds of millions of dollars of uncompensated medical care annually. As a consequence, fewer doctors are available to provide emergency medical services.

(e) The operation of emergency departments and the provision of emergency and related services costs hospitals many hundreds of millions of dollars annually. These losses have contributed to the closure of 26 hospitals between 1995 and 2003 with a corresponding reduction in emergency care. Other hospitals are threatened with closure or reductions in emergency care. The people intend, by adopting this act, to allocate funds to all hospitals operating licensed emergency departments in the manner specified in order to support and augment hospital emergency services and to help prevent the further erosion of such services. Because all hospitals with emergency rooms have a legal obligation to provide emergency services, all hospitals operating emergency rooms should share state funds available under this act based upon their relative emergency department volume, uncompensated care, provision of charity care, and provision of care to county indigent patients, as specified.

(f) Community clinics are an important part of the emergency medical system and the continuum of emergency care. Community clinics provide services that prevent emergent conditions from developing; reduce unnecessary emergency room use; and also provide follow-up care for patients discharged from the emergency room. This keeps patients from unnecessarily using or returning to

the emergency room. However, community clinics are financially threatened by the growing number of uninsured patients they must treat.

(g) Emergency medical care is a vital public service, similar to fire and police services, and is the back-bone of the health care safety net for our communities. By providing high quality trauma and emergency care, lives will be saved and taxpayer costs for healthcare will be reduced.

(h) Currently the state funds the 911 emergency telephone system with a surcharge on telephone calls made within California. A small increase in the existing emergency telephone surcharge, no more than 50 cents per month for households, is appropriate to enhance the delivery of emergency medical care and to help offset the costs of uncompensated emergency medical care in California.

(i) The people of the State of California hereby enact the 911 Emergency and Trauma Care Act to create an ongoing fund to improve the 911 emergency telephone system; to improve the training and equipment of firefighters and paramedics; and to improve, and to preserve and expand access to, trauma and emergency medical care.

(j) The intent of this act is to provide additional funding for emergency medical services for the health and welfare of our residents. Further, existing funding, although inadequate, must be protected and maintained so that the intent of this act is realized.

SECTION 2. *Supplemental Funding for Emergency and Trauma Services*

SEC. 2.1. Section 41020.5 is added to the Revenue and Taxation Code, to read:

41020.5. (a) The surcharge imposed pursuant to Section 41020 shall be increased at a rate of 3 percent on amounts paid by every person in the state on intrastate telephone communication service of the charges made for such services. The increase in surcharge shall be paid by the service user and shall be billed and collected in the same manner as the surcharge imposed pursuant to Section 41020.

(b) Notwithstanding subdivision (a), the surcharge shall not be imposed on residential service users of lifeline telephone services pursuant to Article 8 (commencing with Section 871) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(c) Notwithstanding subdivision (a), no service provider shall bill a surcharge to, or collect a surcharge from, a residential service user that exceeds 50 cents ($0.50) per month. For purposes of this section, the term "residential service user" does not include mobile telecommunication services.

SEC. 2.2. Section 41135 of the Revenue and Taxation Code is amended to read:

41135. All amounts required to be paid to the state under this part shall 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*, on a quarterly basis,* transmit the payments to the State Treasurer to be deposited in the State Treasury ~~to the credit of the State Emergency Telephone Number Account in the General Fund, which is hereby created.~~ *and credited to the 911 Emergency and Trauma Care Fund and the following accounts within that fund, which are hereby created:*

(a) To the State Emergency Telephone Number Account, all of the amounts collected pursuant to Section 41020.

(b) To the State Emergency Telephone Number Account, three-fourths of 1 percent of the amounts collected pursuant to Section 41020.5.

(c) To the Emergency and Trauma First Responders Account, 3 and three-fourths percent of the amounts collected pursuant to Section 41020.5.

(d) To the Community Clinics Urgent Care Account, 5 percent of the amounts collected pursuant to Section 41020.5.

(e) To the Emergency and Trauma Physician Uninsured Account, 30 and one-half percent of the amounts collected pursuant to Section 41020.5; and

(f) To the Emergency and Trauma Hospital Services Account, 60 percent of the amounts collected pursuant to Section 41020.5.

(g) There is also hereby created in the fund the Emergency and Trauma Physician Unpaid Claims Account to receive funds pursuant to Section 1797.99a of the Health and Safety Code and subdivision (c) of Section 16950 and Section 16950.2 of the Welfare and Institutions Code.

SECTION 3. *Administration of the State Emergency Telephone Number Account*

SEC. 3.1. Section 41136.5 is added to the Revenue and Taxation Code, to read:

41136.5. Funds in the State Emergency Telephone Number Account credited pursuant to subdivision (b) of Section 41135 shall be continuously appropriated to and administered by the Department of General Services solely for technological and service improvements to the basic emergency phone number system. Appropriations are made without regard to fiscal years and all interest earned in the account shall remain in the account for allocation pursuant to this section. The Department of General Services shall establish criteria for disbursing funds to state or local agencies pursuant to this section.

SEC. 3.2. Section 41136.6 is added to the Revenue and Taxation Code, to read:

41136.6. Funds in the State Emergency Telephone Number Account credited pursuant to subdivision (a) of Section 41135 may not be used to satisfy any debt, obligation, lien, pledge, or any other encumbrance, except as provided in Section 41136.

SECTION 4. *Administration of Emergency and Trauma First-Responders Account*

SEC. 4.1. Section 1797.117 is added to the Health and Safety Code, to read:

1797.117. Funds in the state Emergency and Trauma First-Responders Account shall be continuously appropriated to and administered by the Office of the State Fire Marshal. The Office of the State Fire Marshal shall allocate those funds solely to the California Firefighter Joint Apprenticeship Training Program, for training and related equipment for firefighters and pre-hospital emergency medical workers. The California Firefighter Joint Apprenticeship Training Program shall deliver the training as required by subdivision (c) of Section 8588.11 of the Government Code. Appropriations are made without regard to fiscal years and all interest earned in the account shall remain in the account for allocation pursuant to this section.

SECTION 5. *Administration of Community Clinics Urgent Care Account*

SEC. 5.1. Article 6 (commencing with Section 1246) is added to Chapter 1 of Division 2 of the Health and Safety Code, to read:

Article 6. Administration of Community Clinics Urgent Care Account

1246. (a) There is hereby established the Community Clinics Urgent Care Account in the 911 Emergency and Trauma Care Fund. Funds in the

Community Clinics Urgent Care Account shall be continuously appropriated to and administered by the Office of Statewide Health Planning and Development solely for the purposes of this section. The office shall allocate the funds for eligible nonprofit clinic corporations providing vital urgent care services to the uninsured. The funds shall be allocated by the office pursuant to the provisions of subdivisions (b) and (c). Appropriations are made without regard to fiscal years and all interest earned in the account shall remain in the account for allocation pursuant to this section.

(b) Annually, commencing August 1, 2005, the office shall allocate to each eligible nonprofit clinic corporation a percentage of the balance present in the Community Clinics Urgent Care Account as of July 1 of the year the allocations are made and subject to subdivision (d), based on the formula provided for in subdivision (c).

(c) Funds in the Community Clinics Urgent Care Account shall be allocated only to eligible nonprofit clinic corporations. Funds in the Community Clinics Urgent Care Account shall be allocated to eligible nonprofit clinic corporations on a percentage basis based on the total number of uninsured patient encounters.

(1) For purposes of this section, an "eligible nonprofit clinic corporation" shall meet the following requirements:

(A) The corporation shall consist of nonprofit free and community clinics licensed pursuant to subdivision (a) of Section 1204 or of clinics operated by a federally recognized Indian tribe or tribal organization and exempt from licensure pursuant to subdivision (c) of Section 1206.

(B) The corporation must provide at least 1,000 uninsured patient encounters based on data submitted to the office for the year the allocations are made.

(2) The total number of uninsured patient encounters shall be based on data submitted by each eligible nonprofit clinic corporation to the office pursuant to the reporting procedures established by the office under Section 1216 of the Health and Safety Code. Beginning August 1, 2005, and every year thereafter, the allocations shall be made by the office based on data submitted by each eligible nonprofit clinic corporation to the office by February 15 of the year the allocations are made.

(3) For purposes of this section, except as otherwise provided in paragraph (4), an uninsured patient encounter shall be defined as an encounter for which the patient has no public or private third party coverage. An uninsured patient encounter shall also include encounters involving patients in programs operated by counties pursuant to Part 4.7 (commencing with Section 16900) of Division 9, and Section 17000 of the Welfare and Institutions Code.

(4) Each uninsured patient encounter shall count as one encounter, except that the encounters involving patients in programs operated pursuant to subdivision (aa) of Section 14132 and Division 24 (commencing with Section 24000) of the Welfare and Institutions Code, and pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, shall count as 0.15 encounter for purposes of determining the total number of uninsured patient encounters for each eligible nonprofit clinic corporation.

(5) The office shall compute each eligible nonprofit clinic corporation's percentage of total uninsured patient encounters for all eligible nonprofit clinic corporations and shall apply the percentages to the available funds in the account to compute a preliminary allocation amount for each eligible nonprofit clinic corporation. If the preliminary allocation for an eligible nonprofit clinic

corporation is equal to or less than twenty-five thousand dollars ($25,000), the allocation for that eligible nonprofit corporation shall be twenty-five thousand dollars ($25,000).

(6) For the remaining eligible nonprofit clinic corporations, the office shall compute each remaining eligible nonprofit clinic corporation's percentage of total uninsured patient encounters for the remaining eligible clinic corporations and shall apply the percentage to the remaining funds available to determine the allocation amount for each remaining eligible nonprofit clinic corporation, subject to paragraph (7).

(7) No eligible nonprofit clinic corporation shall receive an allocation in excess of 2 percent of the total moneys distributed to all eligible nonprofit clinic corporations in that year.

(d) The Office of Statewide Health Planning and Development shall be reimbursed from the Community Clinics Urgent Care Account for the office's actual cost of administration. The total amount available for reimbursement of the office's administrative costs shall not exceed 1 percent of the moneys credited to the account during the fiscal year.

SECTION 6. *Administration of Emergency and Trauma Physician Uninsured and Unpaid Claims Accounts*

SEC. 6.1. Chapter 2.5 (commencing with Section 1797.98a) of Division 2.5 of the Health and Safety Code is repealed.

~~CHAPTER 2.5. THE MADDY EMERGENCY MEDICAL SERVICES FUND~~

~~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.

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.

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.

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.~~

~~1797.98f. Notwithstanding any other provision of this chapter, an emergency physician and surgeon, or an emergency physician group, with a gross billings arrangement with a hospital shall be entitled to receive reimbursement from the Emergency Medical Services Fund for services provided in that hospital, if all of the following conditions are met:~~

~~(a) The services are provided in a basic or comprehensive general acute care hospital emergency department, or in a standby emergency department in a small and rural hospital as defined in Section 124840.~~

~~(b) The physician and surgeon is not an employee of the hospital.~~

~~(c) All provisions of Section 1797.98c are satisfied, except that payment to the emergency physician and surgeon, or an emergency physician group, by a hospital pursuant to a gross billings arrangement shall not be interpreted to mean that payment for a patient is made by a responsible third party.~~

~~(d) Reimbursement from the Emergency Medical Services Fund is sought by the hospital or the hospital's designee, as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group.~~

~~For purposes of this section, a "gross billings arrangement" is an arrangement whereby a hospital serves as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group, and pays the emergency physician and surgeon, or emergency physician group, a percentage of the emergency physician and surgeon's or group's gross billings for all patients.~~

~~1797.98g. The moneys contained in an Emergency Medical Services Fund, other than moneys contained in a Physician Services Account within the fund pursuant to Section 16952 of the Welfare and Institutions Code, shall not be subject to Article 3.5 (commencing with Section 16951) of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.~~

SEC. 6.2. Chapter 2.5 (commencing with Section 1797.98a) is added to Division 2.5 of the Health and Safety Code, to read:

CHAPTER 2.5. EMERGENCY AND TRAUMA PHYSICIAN SERVICES COMMISSION

Article 1. General Provisions

1797.98a. (a) There is hereby created the Emergency and Trauma Physician Services Commission in the Department of Health Services.

(b) The commission shall consist of 10 members, appointed as follows:

(1) Three full-time physicians and surgeons who are board certified in emergency medicine and who are members of a professional medical association and are in a position to represent the interests of emergency physicians generally, appointed by the Governor of California; and

(2) Three full-time physicians and surgeons who provide on-call specialty services to hospital emergency departments and who are members of a professional medical association and are in a position to represent the interests of on-call physician specialists generally, appointed by the Governor of California; and

(3) One full-time physician and surgeon who is board certified in emergency medicine and who is a member of a professional medical association and is in a position to represent the interests of emergency physicians generally, appointed by the Senate Rules Committee; and

(4) One full-time physician and surgeon who provides on-call specialty services to hospital emergency departments and is a member of a professional medical association and is in a position to represent the interests of on-call physician specialists generally, appointed by the Senate Rules Committee; and

(5) One full-time physician and surgeon who is board certified in emergency medicine and who is a member of a professional medical association and is in a position to represent the interests of emergency physicians generally, appointed by the Speaker of the California State Assembly; and

(6) One full-time physician and surgeon who provides on-call specialty services to hospital emergency departments and who is a member of a professional medical association and is in a position to represent the interests of on-call physician specialists generally, appointed by the Speaker of the California State Assembly.

(c) The term of the members of the commission shall be three calendar years, commencing January 1 of the year of appointment, provided that the initial terms of the members shall be staggered.

(d) The members of the commission shall receive no compensation for their services to the commission, but shall be reimbursed for their actual and necessary travel and other expenses incurred in the discharge of their duties.

(e) The commission shall select a chairperson from its members, and shall meet at least quarterly on the call of the director, the chairperson, or two members of the commission.

(f) The commission shall advise the director on all aspects of the Emergency and Trauma Physician Services Accounts, including both the Emergency and Trauma Physician Unpaid Claims Account and the Emergency and Trauma Physician Uninsured Account.

(g) A majority of both the emergency physician members and the on-call physician specialist members shall constitute a quorum, and no recommendation or action will be effective in the absence of a majority vote of emergency physician members and a majority vote of on-call physician specialist members.

(h) The commission shall review and approve the forms, guidelines, and regulations implementing the Emergency and Trauma Physician Uninsured and Unpaid Claims Accounts.

(i) The commission shall review and approve applications by counties to administer their own Emergency and Trauma Physician Uninsured and Unpaid Claims Accounts.

(j) For each calendar quarter and at the end of each calendar year, the State Department of Health Services or, where applicable, the administering agency for each county shall report to the Legislature and the Emergency and Trauma Physician Services Commission on the implementation and status of the Maddy Emergency Medical Services Fund, Emergency and Trauma Physician Unpaid Claims Account and the Emergency and Trauma Physician Uninsured Account. These reports and the underlying data supporting these reports shall be publicly available. These reports shall, for the department and each county, 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 Maddy Emergency Medical Services Fund ("fund").

(2) The total amount of funds allocated to each county administering the account from the Emergency and Trauma Physician Unpaid Claims Account ("Unpaid Claims Account").

(3) The total amount of funds allocated to each county administering the account from the Emergency and Trauma Physician Uninsured Account ("Uninsured Account").

(4) The fund and account balances and the amount of moneys disbursed from the fund and accounts to physicians.

(5) For both the fund and accounts, the pattern and distribution of claims, including but not limited to the total number of claims submitted by physicians and surgeons in aggregate from each facility.

(6) For both the fund and the accounts, the amount of moneys available to be disbursed to physicians, the dollar value of the total allowable claims submitted, and the percentage of such claims which were reimbursed.

(7) A statement of the policies, procedures, and regulatory action taken to implement and run the program under this chapter.

(8) The actual administrative costs of the administering agency incurred in administering the program.

(k) (1) The State Board of Equalization shall, on a quarterly basis, report to the Legislature and the Emergency and Trauma Physician Services Commission and make publicly available, amounts required to be paid to the 911 Emergency and Trauma Care Fund pursuant to Section 41135 of the Revenue and Taxation Code and amounts credited to each of the accounts created within that fund.

(2) The administering agency, upon request, shall make available to any member of the public a listing of physicians and hospitals that have received reimbursement from the Unpaid Claims Account, the Uninsured Account and the Emergency and Trauma Hospital Services Account and the amount of the reimbursement they have received. This listing shall be compiled on a semi-annual basis.

(l) Each administering agency of an account under this chapter shall make all reasonable efforts to notify physicians and surgeons who provide, or are likely to provide, emergency services in each county as to the availability of the accounts and the process by which to submit a claim against the accounts. 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.

(m) The department may issue forms, guidelines or regulations to implement this chapter pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code.

1797.98b. (a) For purposes of this chapter, the department shall be the administering agency unless delegated to a county pursuant to subdivision (c).

(b) The department shall be reimbursed from the state Emergency and Trauma Physician Uninsured and Unpaid Claims Accounts for its actual costs of administration not to exceed 4 percent of the moneys credited to these accounts during the fiscal year, unless a different percentage is approved by the

Emergency and Trauma Physician Services Commission as necessary for the efficient administration of the accounts.

(c) The department may delegate to a county, upon application, the administration of its own County Emergency and Trauma Physician Uninsured and Unpaid Claims Accounts. The department shall establish terms and conditions for the delegation of a county to administer the accounts, which shall include, but not be limited to all of the following:

(1) The County Board of Supervisors shall request, by resolution, to be the administering agency and shall have established accounts within the Maddy Emergency Medical Services Fund;

(2) The resolution shall specify any delegation of this authority proposed by the County Board of Supervisors, and shall specify who will serve as the administering officer;

(3) The county is of sufficient size to justify such delegation as cost effective;

(4) The county has demonstrated its commitment to maintaining a stable and high quality emergency medical services system. An example of such commitment is a county's augmentation of funding for emergency medical services;

(5) The county will accept both paper and electronic claims;

(6) Administration by the county is supported by local physician organizations;

(7) The costs of administration will not exceed 4 percent of the money credited to these accounts during the fiscal year, or the amount authorized by the Emergency and Trauma Physician Services Commission as necessary for the efficient administration of the accounts;

(8) The department may approve an application by a county for a period not more than three years. A county may thereafter reapply for delegation;

(9) The department shall give great weight to the recommendations of the Emergency and Trauma Physician Services Commission during the application and review process and the commission shall have final authority to approve applications pursuant to subdivision (i) of Section 1797.98a.

(d) If a county is delegated by the department to be the administering agency, claims for emergency medical services provided at facilities within that county may only be submitted to that county, and may not be submitted to the department.

(e) If a county is delegated by the department to be the administering agency, the department shall do all of the following:

(1) authorize a county to keep moneys deposited into that county's Emergency and Trauma Physician Unpaid Claims Account for reimbursements pursuant to this chapter,

(2) each calendar quarter, transfer to the County Emergency and Trauma Physician Services Unpaid Claims Account in that county funds deposited into the State Emergency and Trauma Physician Services Unpaid Claims Account pursuant to Sections 16950 and 16950.2 of the Welfare and Institutions Code and allocated to that county by the department based on the total population of that county to the total population of the state,

(3) each calendar quarter, transfer funds from the State Emergency and Trauma Physician Uninsured Account to that county's Emergency and Trauma Physician Uninsured Account, based on the total population of that county to the total population of the state, and

(4) authorize the county to deduct its actual costs of administration, not to exceed the amount authorized pursuant to paragraph (7) of subdivision (c).

1797.98c. (a) It is the intent of the people 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 claims submitted by physicians and surgeons. The schedule shall provide for disbursements of moneys in the Emergency and Trauma Physicians Unpaid Claims Account and the Emergency and Trauma Physicians Uninsured Account on a quarterly basis to applicants who have submitted accurate and complete data for payment. The administering agency may, as necessary, request records and documentation to support the claims requested by physicians and surgeons and the administering agency may review and audit the records for accuracy. Claims submitted 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 claims that are inaccurate or unsupported by records may be excluded from submitting future claims. 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 supervision of that person, shall not be the administering officer.

(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 department 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 accounts to eligible 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 accounts 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 standby, 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) 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) Reimbursement for emergency services rendered under this chapter shall be limited to emergency services provided on the calendar day on which emergency medical services are first provided and on the immediately following two calendar days, however reimbursement for surgery for emergency services is permitted for up to seven calendar days if such surgery is necessary to stabilize the patient's emergency medical condition and could not be performed during the first three calendar days due to the patient's condition. Notwithstanding this subdivision, 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.

(h) 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).

(i) The department shall establish an equitable and efficient mechanism for resolving disputes relating to claims for reimbursements from the accounts. 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 Title 9 of Part 3 of the Code of Civil Procedure, or to a local medical society for resolution by neutral parties.

1797.98d. Notwithstanding any other provision of this chapter, an emergency physician and surgeon, or an emergency physician group, with a gross billings arrangement with a hospital shall be entitled to receive reimbursement from the Emergency and Trauma Physician Uninsured and Unpaid Claims Accounts for services provided in that hospital, if all of the following conditions are met:

(a) The services are provided in a basic or comprehensive general acute care hospital emergency department, or in a standby emergency department in a small and rural hospital as defined in Section 124840.

(b) The physician and surgeon is not an employee of the hospital.

(c) All provisions of Section 1797.99b are satisfied for reimbursement from the Unpaid Claims Account, and all provisions of Section 1797.98c are satisfied for reimbursement from the Uninsured Claims Account, except that payment to the emergency physician and surgeon, or an emergency physician group, by a hospital pursuant to a gross billings arrangement shall not be interpreted to mean that payment for a patient is made by a responsible third party.

(d) Reimbursement from the Uninsured and Unpaid Claims Accounts is sought by the hospital, or the hospital's designee, as the billing and collection agent for the emergency physician and surgeon or an emergency physician group.

For purposes of this section, a "gross billings arrangement" is an arrangement whereby a hospital serves as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group, and

pays the emergency physician and surgeon, or emergency physician group, a percentage of the emergency physician and surgeon's or group's gross billings for all patients.

Article 2. Emergency and Trauma Physician Unpaid Claims Account

1797.99a. (a) The fund provided for in this chapter shall be known as the Maddy Emergency Medical Services (EMS) Fund.

(b) Each county shall establish a Maddy EMS Fund. Within the Maddy EMS Fund, each county shall establish a County Emergency and Trauma Physician Unpaid Claims Account and a County Emergency and Trauma Hospital Services Account. A county that has been designated as an administering agency pursuant to subdivision (c) of Section 1797.98b, shall also establish a county Emergency and Trauma Physician Uninsured Account to receive funds transferred from the state Emergency and Trauma Physician Uninsured Account pursuant to paragraph (3) of subdivision (e) of Section 1797.98b and Section 1797.99c.

(c) The source of the money in each Maddy EMS Fund shall be the penalty assessments made for this purpose, as provided in Section 76000 of the Government Code, and allocated pursuant to subdivision (d). Other money, which may be transferred from the state to accounts within the Maddy EMS Fund pursuant to this chapter, is not subject to allocation pursuant to subdivision (d).

(d) 58 percent of the money in the Maddy EMS Fund derived pursuant to subdivision (c) shall be deposited into the County Emergency and Trauma Physician Unpaid Claims Account. Each calendar quarter, the County Treasurer shall transfer the funds in the account to the State Treasurer for credit to the State Emergency and Trauma Physician Unpaid Claims Account created pursuant to subdivision (g) of Section 41135 of the Revenue and Taxation Code; 25 percent shall be deposited into the County Emergency and Trauma Hospital Services Account for distribution by the county only to hospitals providing disproportionate trauma and emergency medical care services. The remaining money derived pursuant to subdivision (c) shall remain in each county and shall be used to reimburse the county for actual costs of administration and for other emergency medical services purposes as determined by each county, including, but not limited to, the funding of regional poison control centers. All interest earned on moneys in each account within the Maddy EMS Fund shall be deposited in the same account for disbursement as specified in this chapter.

(e) Funds in the State Emergency and Trauma Physician Unpaid Claims Account shall be continuously appropriated to and administered by the State Department of Health Services. The department shall transfer funds, as necessary, to a county that has been delegated the role of administering agency pursuant to subdivision (c) of Section 1797.98b. Such funds shall be continuously appropriated and allocated to and by the county pursuant to this chapter. The administering agency shall allocate the funds solely for the reimbursement of physicians and surgeons providing uncompensated emergency services and care up to the time the patient is stabilized, except those physicians and surgeons employed by hospitals, pursuant to this chapter. Appropriations are made without regard to fiscal years and all interest earned in the account shall remain in the account for allocation pursuant to this section.

(f) Any physician and surgeon may be reimbursed from the Emergency and Trauma Physician Unpaid Claims Account up to 50 percent of the amount claimed pursuant to subdivision (a) of Section 1797.99b for the initial cycle of reimbursements made by the administering agency in a given year, pursuant to

subdivision (d) of Section 1797.99b. 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 subdivision (g), shall be distributed proportionally based on the dollar amount of claims paid to all physicians and surgeons who submitted qualifying claims during that year.

(g) Each administering agency may hold in reserve and roll-over to the following year up to 15 percent of the funds in the Emergency and Trauma Physician Unpaid Claims Account.

1797.99b. (a) Physicians and surgeons wishing to be reimbursed from the Emergency and Trauma Physician Unpaid Claims Account shall submit their claims for services provided to patients who do not make any payment for services and for whom no responsible third party makes any payment. If the services were provided in a county in which the county is the administering agency, the physician and surgeon shall submit the claim to that county and may not submit a claim to the department. The administering agency shall accept both paper and electronic claims. Claims shall conform to the CMS 1500 forms, or in whatever format is mandated by the Health Insurance Portability and Accountability Act of 1996 for physician claims. Payments from the Emergency and Trauma Physician Services Uninsured Account shall not constitute payment for services.

(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 for claims submitted 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 funds from the fund.

(5) The claim has been received by the administering agency within one year of the date of service.

(d) Notwithstanding any other restriction on reimbursement, the administering agency shall adopt a reimbursement methodology to establish a uniform reasonable level of reimbursement from the Unpaid Claims Account for reimbursable services using the Relative Value Units (RVUs) established by the Resource Based Relative Value Scale (RBRVS). 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. The administering agency, upon approval by the Emergency and Trauma Physician Services Commission, may adopt a different reimbursement methodology to promote equitable compensation to the physician community as a whole for uncompensated emergency services and care. For the purpose of submission and reimbursement of claims, the administering agency shall adopt and use the current version of the Physician's Current Procedural Terminology, published by the American Medical Association, or whatever coding set is mandated by the Health Insurance Portability and Accountability Act of 1996 for physician claims.

Article 3. Emergency and Trauma Physician Uninsured Account

1797.99c. (a) Funds in the State Emergency and Trauma Physician Uninsured Account shall be continuously appropriated to and administered by the State Department of Health Services. The department shall transfer funds, as necessary, to a county that has been delegated the role of administering agency pursuant to subdivision (c) of Section 1797.98b. Such funds shall be continuously appropriated and allocated to and by the county pursuant to this chapter. The administering agency shall allocate the funds solely for the reimbursement of physicians and surgeons providing uncompensated emergency services and care up to the time the patient is stabilized, except those physicians and surgeons employed by hospitals, pursuant to this chapter. Appropriations are made without regard to fiscal years and all interest earned in the account shall remain in the account for allocation pursuant to this section.

(b) Physicians and surgeons providing emergency services and care to an uninsured patient shall be entitled to receive reimbursement for services rendered to such patients, on a quarterly basis, from the account. For each such patient, a physician and surgeon shall bill the patient unless the physician and surgeon reasonably believes that the patient will not make payment. Physicians and surgeons shall submit a claim to the administering agency for reimbursement within one year of the day the services were rendered. If the services were provided in a county in which the county is the administering agency, the physician and surgeon shall submit the claim to that county and may not submit a claim to the department. The administering agency shall accept both paper and electronic claims. Claims shall conform to the CMS 1500 forms, or in whatever format is mandated by the Health Insurance Portability and Accountability Act of 1996 for physician claims.

(c) For purposes of this chapter, the term "uninsured patient" means a patient that a physician and surgeon has determined after reasonable and

prudent inquiry is without public or private third party health coverage. Payments by hospitals to physicians and surgeons to help assure the availability of physicians and surgeons to an emergency department or trauma center shall not be considered third party health coverage.

(d) The amount of reimbursement paid shall be based on the value of claims received by the administering agency during the calendar quarter for services rendered to uninsured patients, using the Relative Value Units (RVUs) established by the Resource Based Relative Value Scale (RBRVS) as the reimbursement methodology. For each calendar quarter, the administering agency will determine the total number of RVUs of services submitted, and shall pay each physician and surgeon submitting claims that physician's percentage of the total funds in the account attributed to claims received for that calendar quarter, based on that physician's percentage of the total RVU pool. The administering agency, upon approval by the Emergency and Trauma Physician Services Commission, may adopt a different reimbursement methodology to promote equitable compensation to the physician community as a whole for uncompensated emergency services and care. For the purpose of submission and reimbursement of claims, the administering agency shall adopt and use the current version of the Physician's Current Procedural Terminology, published by the American Medical Association, or whatever coding set is mandated by the Health Insurance Portability and Accountability Act of 1996 for physician claims. No physician shall be reimbursed in an amount greater than the total the physician has billed for the services claimed. The administering agency shall issue such reimbursements within 90 days following the end of each calendar quarter. Undisbursed funds, if any, shall remain in the account, and be rolled over to the following quarter.

(e) Within 30 days following the end of each calendar quarter, physicians and surgeons shall provide the administering agency with:

(1) a list of all claims for which reimbursement is received within one year of the date of service from any public or private third party health coverage and the amount which was received from the Uninsured Claims Account for each of these claims; and

(2) a list of all claims reimbursed by the Uninsured Claims Account for which the total reimbursement from all sources exceeds the physician's billed charges, and the amount of that excess reimbursement for each of these claims.

After such notification, the administering agency shall reduce the physician and surgeon's future payment of claims from the account by the amount the physician received for claims reported pursuant to paragraph (1), and by the amount of the excess payment for those claims reported pursuant to paragraph (2). In lieu of a reduction in future payments from the account, the physician and surgeon shall refund excess payments to the account with the lists referred to in paragraphs (1) and (2) described above. Physicians and surgeons who receive reimbursement from the Uninsured Account shall agree to stop any current, and waive any future, collection efforts to obtain additional reimbursement from the patient should the total reimbursement from all sources reach or exceed the physician's or surgeon's billed charges.

SECTION 7. *Administration of The Emergency and Trauma Hospital Services Account*

SEC. 7.1. Chapter 2.6 (commencing with Section 1797.99h) is added to Division 2.5 of the Health and Safety Code, to read:

CHAPTER 2.6. THE EMERGENCY AND TRAUMA HOSPITAL SERVICES ACCOUNT

1797.99h. The following definitions shall apply to terms utilized in this chapter:

(a) "Bad debt cost" means the aggregate amount of accounts and notes receivable during a calendar year by an eligible hospital as credit losses, using any method generally accepted for estimating such amounts that on the date this act became effective, based on a patient's unwillingness to pay, and multiplied by the eligible hospital's cost to charges ratio.

(b) "County indigent program effort cost" means the amount of care during a calendar year by an eligible hospital, expressed in dollars and based upon the hospital's full established rates, provided to indigent patients for whom the county is responsible, whether the hospital is a county hospital or a non-county hospital providing services to indigent patients under arrangements with a county, multiplied by the eligible hospital's cost to charges ratio.

(c) "Charity care cost" means amounts actually written off, using any method generally accepted for determining such amounts on the date this act became effective, by an eligible hospital during a calendar year for that portion of care provided to a patient for whom a third party payer is not responsible and the patient is unable to pay, multiplied by the hospital's cost to charges ratio.

(d) "Cost to charges ratio" means a ratio determined by dividing an eligible hospital's operating expenses less other operating revenue by gross patient revenue for its most recent reporting period.

(e) "Operating expenses" means the total direct expenses incurred for providing patient care by the hospital. Direct expenses include (without limitation) salaries and wages, employee benefits, professional fees, supplies, purchased services, and other expenses.

(f) "Other operating revenue" means revenue generated by health care operations from non-patient care services to patients and others.

(g) "Gross patient revenue" means the total charges at the hospital's full established rates for the provision of patient care services and includes charges related to hospital-based physician professional services.

(h) "Emergency department" means, in a hospital licensed to provide emergency medical services, the location in which those services are delivered.

(i) "Eligible hospital" means a hospital licensed under Section 1250 of the Health and Safety Code that operates an Emergency Department or a children's hospital as defined in Section 10727 of the Welfare and Institutions Code.

(j) "Emergency department encounter" or "emergency department visit" each means a face to face contact between a patient and the provider who has primary responsibility for assessing and treating the patient in an emergency department and exercises independent judgment in the care of the patient. An emergency department encounter or visit is counted for each patient of the emergency department, regardless of whether the patient is admitted as an inpatient or treated and released as an outpatient. An emergency department encounter or visit shall not be counted where a patient receives triage services only.

(k) "Emergency and disaster management plan" means a plan developed to provide appropriate response to emergencies and disasters, including preparedness activities, response activities, recovery activities, and mitigation activities.

(l) "Office" means the Office of Statewide Health Planning and Development.

(m) "Disaster" means a natural or man-made event that significantly: (1) disrupts the environment of care, such as damage to buildings and grounds due to severe wind storms, tornadoes, hurricanes, or earthquakes; (2) disrupts care and treatment due to: (A) loss of utilities including, but not limited to, power, water, and telephones, or (B) floods, civil disturbances, accidents or emergencies in the surrounding community; or (3) changes or increases demand for the organization's services such as a terrorist attack, building collapse, or airplane crash in the organization's community.

(n) "Department" means the State Department of Health Services.

(o) "Funding percentage" means the sum of (1) an eligible hospital's percentage of hospital emergency care (as defined in subdivision (s) below) multiplied by a factor of .80, added to (2) such hospital's percentage of effort (as defined in subdivision (r) below) multiplied by a factor of .20, the sum to be expressed as a percentage.

(p) "Hospital Account" means the Emergency and Trauma Hospital Services Account of the 911 Fund established pursuant to subdivision (f) of Section 41135 of the Revenue and Taxation Code.

(q) "911 Fund" means the 911 Emergency and Trauma Care Fund established pursuant to Section 41135 of the Revenue and Taxation Code.

(r) "Percentage of effort" means the sum of an eligible hospital's total amount of charity care cost plus that hospital's total amount of bad debt cost plus that hospital's county indigent program effort cost, as a percentage of the sum of the total amount of charity care cost plus the total amount of bad debt cost plus the total county indigent program effort cost reported in final form to the department by all eligible hospitals for the same calendar year.

(s) "Percentage of hospital emergency care" means an eligible hospital's total emergency department encounters for the most recent calendar year for which such data has been reported to the department in final form, as a percentage of all emergency department encounters reported in final form by all eligible hospitals for the same calendar year. In the case of a children's hospital which does not operate an emergency department and provides emergency treatment to a patient under eighteen years of age under arrangements with an emergency department of a hospital that is: (1) located within 1,000 yards of the children's hospital, and (2) is either (A) under common ownership or control with the children's hospital or, (B) has contracted with the children's hospital to provide emergency services to its patients under eighteen years of age, the children's hospital providing emergency services to such patient shall receive credit for the emergency department encounter, and not the hospital operating the emergency department.

(t) "Joint Commission on Accreditation of Healthcare Organizations" means that certain independent, nonprofit organization that evaluates and accredits nearly 18,000 health care organizations and programs in the United States, including hospitals, home care agencies, nursing facilities, ambulatory care facilities, clinical laboratories, behavioral health care organizations, HMOs, and PPOs.

(u) "American Osteopathic Association" means that certain nonprofit national association representing osteopathic physicians which accredits hospitals, and whose accreditation of hospitals is accepted for participation in the federal Medicare program.

1797.99i. (a) The department shall calculate each eligible hospital's funding percentage to be used for the next calendar year and notify each eligible

hospital of its proposed funding percentage and that for all hospitals by no later than September 30 of each year.

(b) The department shall receive and review the accuracy and completeness of information submitted by eligible hospitals pursuant to Section 1797.99j. The department shall develop a standard form to be utilized for reporting such information by eligible hospitals, but shall accept information from eligible hospitals which is not reported on such standard form.

(c) The department shall notify each hospital submitting the information specified under subdivision (a) of Section 1797.99j in writing through a communication delivered by no later than April 30 of each year confirming the information it has from such hospital and of any apparent discrepancies in the accuracy, completeness, or legibility of information submitted by such eligible hospital pursuant to Section 1797.99j. Unless such written notice is timely delivered to an eligible hospital, the information it reports pursuant to Section 1797.99j shall be deemed to be complete and accurate, but it shall be subject to audit under subdivision (f).

(d) A hospital which receives notice from the department that the information it reported was not accurate, complete, or legible shall have 30 days from the date notice is received to provide the department with corrected, completed, and legible information. Such corrected or supplemental information shall be used by the department to make the calculation required by subdivision (a), but shall be subject to audit under subdivision (f). A hospital that does not provide sufficient legible information to establish that it qualifies as an eligible hospital or to allow the commission to make the calculation required under subdivision (a) shall be deemed to not be an eligible hospital.

(e) The department may enter into an agreement with the Office of Statewide Health Planning and Development or another state agency or private party to assist it in analyzing information reported by eligible hospitals and making the hospital funding allocation computations as provided under this chapter.

(f) The department may conduct audits of the use by eligible hospitals of any funds received pursuant to Section 1797.99l, and the accuracy of emergency department patient encounters and other information reported by eligible hospitals. If the department determines upon audit that any funds received were improperly used, or that inaccurate data reported by the eligible hospital resulted in an allocation of excess funds to the eligible hospital, it shall recover any excess amounts allocated to, or any funds improperly used by, an eligible hospital. The department may impose a fine of not more than 25 percent of any funds received by the eligible hospital that were improperly used, or the department may impose a fine of not more than two times any amounts improperly used or received by an eligible hospital if it finds such amounts were the result of gross negligence or intentional misconduct in reporting data or improperly using allocated funds under this chapter on the part of the hospital subject to determination of a court of final jurisdiction. In no event shall a hospital be subject to multiple penalties for both improperly using and receiving the same funds.

(g) (1) A licensed hospital owner shall have the right to appeal the imposition of any fine by the department, or a determination by the department that its hospital is not an eligible hospital, for any reason, or an alleged computational or typographical error by the department resulting in an incorrect allocation of funds to its hospital under Section 1797.99l. A hospital shall not be entitled to be reclassified as an eligible hospital or to have an increase in funds received

under this chapter based upon subsequent corrections to its own final reporting of incorrect data used to determine funding allocations under this chapter.

(2) Any such appeal shall be before an administrative law judge employed by the Office of Administrative Hearings. The hearing shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The decision of the administrative law judge shall be in writing; shall include findings of fact and conclusions of law; and shall be final. The decision of the administrative law judge shall be made within 60 days after the conclusion of the hearing and shall be effective upon filing and service upon the petitioner.

(3) The appeal rights of hospitals under this subdivision (g) shall not be interpreted to preclude any other legal or equitable relief that may be available.

(h) Any fines collected by the department shall be deposited in the Hospital Account within the 911 Fund for allocation to eligible hospitals in accordance with the provisions of Section 1797.99l. Such funds shall not be used for administrative costs, and shall be supplemental to, and shall not supplant, any other funds available to be allocated from such account to eligible hospitals.

(i) In the event it is determined upon a final adjudicatory decision that is no longer subject to appeal that a hospital has been incorrectly determined to not qualify as an eligible hospital, or was allocated an amount less than the amount to which it is entitled under Section 1797.99l, the department shall, from the next allocation of funds to hospitals under Section 1797.99l, allocate to such hospital the additional amount to which it is entitled, and reduce the allocation to all other eligible hospitals pro rata.

1797.99j. (a) Each hospital seeking designation as an eligible hospital shall submit the following information to the department by no later than March 15 of each year, commencing the first March 15 following the operative date of this act:

(1) The number of emergency department encounters taking place in its emergency department for the preceding calendar year;

(2) The total amount of charity care costs of the hospital for the preceding calendar year;

(3) The total amount of bad debt costs for the hospital for the preceding calendar year;

(4) The total amount of county indigent program effort cost for the hospital for the prior calendar year;

(5) A photocopy of its operating license from the State Department of Health Services or equivalent documentation establishing that it operates a licensed emergency department;

(6) A declaration of commitment to provide emergency services as required by paragraph (2) of subdivision (a) of Section 1797.99k.

(b) Both pediatric and adult patients shall be included in the data submitted. The accuracy of the data shall be attested to in writing by an authorized senior hospital official. No other data or information, other than identifying information, shall be required by the department to be reported by eligible hospitals.

(c) Each hospital which receives a preponderance of its revenue from a single associated comprehensive group practice prepayment health care service plan shall report information required by this section for all patients, and not just for patients who are not enrolled in an associated health care service plan.

1797.99k. An eligible hospital shall do all of the following throughout each calendar quarter in which it receives an allocation pursuant to Section 1797.99l:

(1) Maintain an operational emergency department available within its capabilities and licensure to provide emergency care and treatment, as required by law, to any pediatric or adult member of the public who has an emergency medical condition.

(2) On an annual basis, file with the department a declaration stating the hospital's commitment to provide emergency services to victims of any terrorist act or any other disaster, within its capability, and to assist both the state and county in meeting the needs of their residents with emergency medical conditions.

(3) Either be accredited to operate an emergency department by the Joint Commission on Accreditation of Healthcare Organizations or the American Osteopathic Association, or do all of the following:

(A) Participate in a minimum of two disaster training exercises annually.

(B) Provide training and information as appropriate to the hospital's medical staff, nurses, technicians, and administrative personnel regarding the identification, management, and reporting of emergency medical conditions and communicable diseases, as well as triage procedures in cases of mass casualties; and

(C) Collaborate with state and local emergency medical services agencies and public health authorities in establishing communications procedures in preparation for and during a disaster situation.

(4) Establish or maintain an emergency and disaster management plan. This plan shall include response preparations to care for victims of terrorist attacks and other disasters. The plan shall be made available by the hospital for public inspection.

(5) Each hospital shall annually prepare and issue a written report summarizing its compliance with this section.

1797.99l. (a) Funds deposited in the Hospital Account, together with all interest and investment income earned thereon, shall be continuously appropriated without regard to fiscal years to and administered by the State Department of Health Services. The department shall allocate the funds solely to eligible hospitals as provided by this chapter.

(b) Quarterly, commencing June 30 following the operative date of this chapter, the department shall allocate to each eligible hospital a percentage of the balance of the Hospital Account equal to such hospital's funding percentage, as determined by the department pursuant to Section 1797.99i. Notwithstanding:

(1) The annual aggregate allocation to all hospitals that receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan shall not exceed twenty-five million dollars ($25,000,000) during any calendar year, and the department shall reduce the quarterly allocation to each such hospital pro rata, if and to the extent necessary, to contain the aggregate allocation to all such hospitals within any calendar year to a maximum of twenty-five million dollars ($25,000,000). The maximum annual aggregate allocation shall be applied by the department in increments of six million two hundred and fifty thousand dollars ($6,250,000) to the first two quarterly distributions of each calendar year, but no specific portion of the limit on maximum annual aggregate distributions provided by this subsection shall apply to other quarterly distributions to such hospitals.

(2) The maximum aggregate annual allocation of twenty-five million dollars ($25,000,000) to all hospitals that receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan set forth in paragraph (1) above shall be adjusted upward

or downward annually, together with corresponding changes in any quarterly limits, commencing on January 1, 2006, by the same percentage increase or decrease in the aggregate amount deposited in the Hospital Account for the immediate prior calendar year against the aggregate amount deposited in the Hospital Account during the 2004 calendar year. Any adjustment that increases or decreases the maximum aggregate annual allocation to such hospitals shall be applied only to the then current calendar year.

(3) After making the adjustment to the maximum aggregate annual allocation to hospitals that receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan provided by paragraph (2) above, the department shall further adjust such maximum aggregate annual allocation by increasing or decreasing it by a percentage factor equal to the percentage increase or decrease in the aggregate funding percentage by all hospitals receiving a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan in 2004 against the aggregate funding percentage of all hospitals associated with the same health care service plan for the most recent calendar year.

(4) After making the adjustments to the allocation of funds as provided by paragraphs (1) through (3) above, the department shall allocate any funds remaining in the Hospital Account to hospitals which do not receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan pro rata based upon their respective funding percentages.

(c) Prior to each allocation under subdivision (b), the actual costs of the department (including any costs to the department resulting from charges under Section 11527 of the Government Code) for administering the provisions of this chapter, and the percentage of costs incurred by the State Board of Equalization for its functions under Section 41135 of the Revenue and Taxation Code equal to the percentage of remittances it receives under such section which are deposited in the Hospital Account, shall be reimbursed from the Hospital Account. The aggregate funds withdrawn for all administrative costs under this subdivision shall not exceed 1 percent of the total amounts deposited in the Hospital Account (not including any fines collected under subdivision (h) of Section 1197.99i) during the prior quarter.

(d) An eligible hospital shall use the funds received under this section only to further the provision of hospital and medical services to emergency patients. A hospital may not utilize funds received under this chapter to compensate a physician and surgeon pursuant to a contractual agreement for medical services rendered to a patient that would cause total compensation to such physician and surgeon from all public and private sources, including the hospital, to exceed his or her billed charges.

1797.99f. The department may promulgate and adopt regulations to implement, interpret and make specific the provisions of this chapter pursuant to the provisions of the Administrative Procedures Act set forth in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall have no authority to promulgate quasi-legislative rules, or to adopt any rule, guideline, criterion, manual, order, standard, manual, policy, procedure or interpretation that is inconsistent with the provisions of this chapter. This section shall not be interpreted to allow

the department to adopt regulations (as defined by Section 11342.600 of the Government Code) in contravention of Section 11340.5 of the Government Code.

SECTION 8. *Preservation of Existing Funding*

SEC. 8.1. Section 16950 of the Welfare and Institutions Code is amended to read:

16950. (a) Twelve and two-tenths percent, or that portion of the CHIP Account derived from the Physician Services Account in a fiscal year, of each county's allocation under Section 16941 shall be used for the support of or payment for uncompensated physician services.

(b) Up to 50 percent of the moneys provided pursuant to subdivision (a) may be used by counties to pay for new contracts, with an effective date no earlier than July 1989, with private physicians for provision of emergency, obstetric, and pediatric services in facilities which are not owned or operated by a county, and where access to those services has been severely restricted. The contracts may provide for partial or full reimbursement for physician services provided to patients *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.* ~~described in subdivision (f) of Section 16952, and shall be subject to subdivision (d) of Section 16955.~~

(c) ~~At least 50 percent of the moneys provided pursuant to subdivision (a) shall be transferred to the county Physician Services Account established in accordance with Section 16952 and administered in accordance with Article 3.5 (commencing with Section 16951).~~ *Notwithstanding any other provision of this code, at least 50 percent of the moneys provided pursuant to subdivision (a) shall be credited to the State Emergency and Trauma Physician Unpaid Claims Account established pursuant to subdivision (g) of Section 41135 of the Revenue and Taxation Code and allocated for physician and surgeon reimbursement pursuant to Chapter 2.5 (commencing with Section 1797.99a) of Division 2.5 of the Health and Safety Code.*

SEC. 8.2. Section 16950.2 is added to the Welfare and Institutions Code, to read:

16950.2. (a) An amount, equal to the amount appropriated and allocated pursuant to Section 76 of Chapter 230 of the Statutes of 2003 (twenty-four million eight hundred three thousand dollars ($24,803,000)), shall be transferred and credited to the State Emergency and Trauma Physician Unpaid Claims Account, created pursuant to subdivision (g) of Section 41135 of the Revenue and Taxation Code, to be used only for reimbursement of uncompensated emergency services and care as provided in Chapter 2.5 (commencing with Section 1797.99a) of Division 2.5 of the Health and Safety Code from accounts within the Cigarette and Tobacco Products Surtax Fund established pursuant to Section 30122 of the Revenue and Taxation Code, as follows:

(1) Nine million fifteen thousand dollars ($9,015,000) from the Hospital Services Account within the Cigarette and Tobacco Products Surtax Fund;

(2) Two million three hundred twenty-eight thousand dollars ($2,328,000) from the Physician Services Account within the Cigarette and Tobacco Products Surtax Fund;

(3) Thirteen million four hundred sixty thousand dollars ($13,460,000) from the Unallocated Account within the Cigarette and Tobacco Products Surtax Fund.

(b) This transfer shall be made on June 30 of the first fiscal year following adoption of this act, and on June 30 each fiscal year thereafter.

(c) Nothing in this section shall preclude the Legislature from making additional appropriations from any source for the benefit of the Emergency and Trauma Physician Unpaid Account.

SEC. 8.3. Section 16950.3 is added to the Welfare and Institutions Code, to read:

16950.3. (a) An amount, equal to the amount allocated by the State Department of Health Services pursuant to Item 4260-111-0001 (16) of Chapter 157 of the Statutes of 2003 (six million seven hundred fifty-six thousand dollars ($6,756,000)), shall be transferred and credited to the state account, created pursuant to subdivision (d) of Section 41135 of the Revenue and Taxation Code, to be used only for reimbursement of community clinic uncompensated primary care as provided in Chapter 7 (commencing with Section 124900) of Part 4 of Division 106 of the Health and Safety Code from the unallocated account within the Cigarette and Tobacco Products Surtax Fund established pursuant to Section 30122 of the Revenue and Taxation Code.

(b) This transfer shall be made on June 30 of the first fiscal year following adoption of this act, and on June 30 each fiscal year thereafter.

(c) Nothing in this section shall preclude the Legislature from making additional appropriations from any source for the benefit of the state account, created pursuant to subdivision (d) of Section 41135 of the Revenue and Taxation Code.

SEC. 8.4. Section 16951 of the Welfare and Institutions Code is repealed.

~~16951. As a condition of receiving funds pursuant to this chapter, each county shall establish an emergency medical services fund as authorized by subdivision (a) of Section 1797.98 of the Health and Safety Code. This section shall not be interpreted to require any county to impose the assessment authorized by Section 1465 of the Penal Code.~~

SEC. 8.5. Section 16952 of the Welfare and Institutions Code is repealed.

~~16952. (a) (1) Each county shall establish within its emergency medical services fund a Physician Services Account. Each county shall deposit in the Physician Services Account those funds appropriated by the Legislature for the purposes of the Physician Services Account of the fund.~~

~~(2) (A) Each county may encumber sufficient funds to reimburse physician losses incurred during the fiscal year for which bills will not be received until after the fiscal year.~~

~~(B) Each county shall provide a reasonable basis for its estimate of the necessary amount encumbered.~~

~~(C) All funds which are encumbered for a fiscal year shall be expended or disencumbered prior to the submission of the report of actual expenditures required by Sections 16938 and 16980.~~

~~(b) Funds deposited in the Physician Services Account in the county emergency medical services fund shall be exempt from the percentage allocations set forth in subdivision (a) of Section 1797.98. However, funds in the county Physician Services Account shall not be used to reimburse for physician services provided by physicians employed by county hospitals.~~

~~No physician who provides physician services in a primary care clinic which receives funds from this act shall be eligible for reimbursement from the Physician Services Account for any losses incurred in the provision of those services.~~

~~(c) The county physician services account shall be administered by each county, except that a county electing to have the state administer its medically indigent adult program as authorized by Section 16809, may also elect to have~~

~~its county physician services account administered by the state in accordance with Section 16954.~~

~~(d) Costs of administering the account shall be reimbursed by the account, up to 10 percent of the amount of the account.~~

~~(e) For purposes of this article "administering agency" means the agency designated by the board of supervisors to administer this article, or the department, in the case of those CMSP counties electing to have the state administer this article on their behalf.~~

~~(f) The county Physician Services Account shall be used to reimburse physicians for losses incurred for services provided during the fiscal year of allocation due to patients 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.~~

~~(g) (1) Reimbursement for losses shall be limited to emergency services as defined in Section 16953, obstetric, and pediatric services as defined in Sections 16905.5 and 16907.5, respectively.~~

~~(2) It is the intent of this subdivision to allow reimbursement for all of the following:~~

~~(A) All inpatient and outpatient obstetric services which are medically necessary, as determined by the attending physician.~~

~~(B) All inpatient and outpatient pediatric services which are medically necessary, as determined by the attending physician.~~

~~(h) No physician shall be reimbursed for more than 50 percent of the losses submitted to the administering agency.~~

SEC. 8.6. Section 16953 of the Welfare and Institutions Code is repealed.

~~16953. (a) For purposes of this chapter "emergency services" means physician services in one of the following:~~

~~(1) A general acute care hospital which provides basic or comprehensive emergency services for emergency medical conditions.~~

~~(2) A site which was approved by a county prior to January 1, 1990, as a paramedic receiving station for the treatment of emergency patients, for emergency medical conditions.~~

~~(3) Beginning in the 1991-92 fiscal year and each fiscal year thereafter, in a facility which contracted prior to January 1, 1990, with the National Park Service to provide emergency medical services, for emergency medical conditions.~~

~~(4) A standby emergency room in a hospital specified in Section 124840 of the Health and Safety Code, for emergency medical conditions.~~

~~(b) For purposes of this chapter, "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, which in the absence of immediate medical attention could reasonably be expected to result in any of the following:~~

~~(1) Placing the patient's health in serious jeopardy.~~

~~(2) Serious impairment to bodily functions.~~

~~(3) Serious dysfunction to any bodily organ or part.~~

~~(c) It is the intent of this section to allow reimbursement for all inpatient and outpatient services which are necessary for the treatment of an emergency medical condition as certified by the attending physician or other appropriate provider.~~

SEC. 8.7. Section 16953.1 of the Welfare and Institutions Code is repealed.

~~16953.1. Notwithstanding any other provision of this chapter, an emergency physician and surgeon, or an emergency physician group, with a gross billings~~

~~arrangement with a hospital shall be entitled to receive reimbursement from the physician services account in the county's emergency medical services fund for services provided in that hospital, if all of the following conditions are met:~~

~~(a) The services are provided in a basic or comprehensive general acute care hospital emergency department.~~

~~(b) The physician and surgeon is not an employee of the hospital.~~

~~(c) All provisions of Section 16955 are satisfied, except that payment to the emergency physician and surgeon, or an emergency physician group, by a hospital pursuant to a gross billings arrangement shall not be interpreted to mean that payment for a patient is made by a responsible third party.~~

~~(d) Reimbursement from the physician services account in the county's emergency medical services fund is sought by the hospital or the hospital's designee, as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group.~~

~~(e) For purposes of this section, "gross billings arrangement" means an arrangement whereby a hospital serves as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group, and pays the emergency physician and surgeon, or an emergency physician group, a percentage of the emergency physician and surgeon's or group's gross billings for all patients.~~

SEC. 8.8. Section 16953.2 of the Welfare and Institutions Code is repealed.

~~16953.2. Nothing in this article shall prevent a physician from utilizing an agent who furnishes billing and collection services to the physician to submit claims or receive payment for claims.~~

SEC. 8.9. Section 16953.3 of the Welfare and Institutions Code is repealed.

~~16953.3. Notwithstanding any other restrictions on reimbursement, a county may adopt a fee schedule to establish a uniform, reasonable level of reimbursement from the physician services account for reimbursable services.~~

SEC. 8.10. Section 16955 of the Welfare and Institutions Code is repealed.

~~16955. Reimbursement for losses incurred by any physician shall be limited to services provided to a patient defined in subdivision (f) of Section 16952, and where all of the following conditions have been met:~~

~~(a) The physician has inquired if there is a responsible third party source of payment.~~

~~(b) The physician has billed for payment of services.~~

~~(c) Either of the following:~~

~~(1) A period of not less than three months has passed from the date the physician billed the patient or responsible third party, during which time the physician has made reasonable efforts to obtain reimbursement and has not received reimbursement for any portion of the amount billed.~~

~~(2) The physician has received actual notification from the patient or responsible third party that no payment will be made for the services rendered by the physician.~~

~~(d) The physician has stopped any current, and waives any future, collection efforts to obtain reimbursement from the patient, upon receipt of funds from the county physician services account in the county emergency medical services fund.~~

SEC. 8.11. Section 16955.1 of the Welfare and Institutions Code is repealed.

~~16955.1. This article shall not be applied or interpreted so as to prevent a physician from seeking payment from a patient or responsible third party payor,~~

~~or arranging a repayment schedule for the costs of services rendered prior to receiving payment under this article.~~

SEC. 8.12. Section 16956 of the Welfare and Institutions Code is repealed.

~~16956. (a) The administering agency shall establish procedures and time schedules for submission and processing of reimbursement claims submitted by physicians in accordance with this chapter.~~

~~(b) Schedules for payment established in accordance with this section shall provide for disbursement of the funds available in the account periodically and at least annually to all physicians who have submitted claims containing accurate and complete data for payment by the dates established by the administering agency.~~

~~(c) Claims which are not supported by records may be denied by the administering agency, and any reimbursement paid in accordance with this chapter to any physician which is not supported by records shall be repaid to the administering agency, and shall be a claim against the physician.~~

~~(d) Any physician who submits any claim for reimbursement under this chapter which is inaccurate or which is not supported by records may be excluded from reimbursement of future claims under this chapter.~~

~~(e) A listing of patient names shall accompany a physician's claim, and those names shall be given full confidentiality protections by the administering agency.~~

SEC. 8.13. Section 16957 of the Welfare and Institutions Code is repealed.

~~16957. Any physician who submits any claim in accordance with this chapter shall keep and maintain records of the services rendered, the person to whom services were rendered, and any additional information the administering agency may require, for a period of three years after the services were provided.~~

SEC. 8.14. Section 16958 of the Welfare and Institutions Code is repealed.

~~16958. If, after receiving payment from the account, a physician is reimbursed by a patient or a responsible third party, the physician shall do one of the following:~~

~~(a) Notify the administering agency and the administering agency shall reduce the physician's future payment of claims from the account. In the event there is not a subsequent submission of a claim for reimbursement within one year, the physician shall reimburse the account in an amount equal to the amount collected from the patient or third party payor, but not more than the amount of reimbursement received from the account.~~

~~(b) Notify the administering agency of the payment and reimburse the account in an amount equal to the amount collected from the patient or third party payor, but not more than the amount of the reimbursement received from the account for that patient's care.~~

SEC. 8.15. Section 16959 of the Welfare and Institutions Code is repealed.

~~16959. The moneys contained in a Physician Services Account within an Emergency Medical Services Fund shall not be subject to Chapter 2.5 (commencing with Section 1797.98a) of Division 2.5 of the Health and Safety Code.~~

SECTION 9. *New Funds Not to Supplant Existing Funds*

Funds allocated and appropriated pursuant to this act shall be used to supplement existing levels of federal, state and local funding and not to supplant existing levels of funding.

SECTION 10. *Amendment*

This act may only be amended by the Legislature to further its purposes by a statute passed in each house by rollcall vote entered in the journal, four-fifths of the membership concurring.

SECTION 11. *Operative Date*

This act shall become effective immediately upon its adoption by the people, however it shall not become operative until January 1 in the year following its adoption.

SECTION 12. *Severability*

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable. In addition, the provisions of this act are intended to be in addition to and not in conflict with any other initiative measure that may be adopted by the people at the same election, and the provisions of this act shall be interpreted and construed so as to avoid conflicts with any such measure whenever possible. In the event the distribution of funds from any of the accounts established by subdivision (c), (d), (e), (f), or (g) of Section 41135 of the Revenue and Taxation Code is permanently enjoined or invalidated by final judicial action that is not subject to appeal, the funds in any such account shall be continuously transferred to all other accounts in the 911 Emergency and Trauma Care Fund on the same basis as funds are allocated to such accounts by Section 41135 of the Revenue and Taxation Code. Funds remaining in the account shall be allocated as many times as necessary to reduce the account balance to ten thousand dollars ($10,000) or less.

SECTION 13. *Conformity with State Constitution*

SEC. 13.1. Section 14 is added to Article XIII B of the California Constitution, to read:

SEC. 14. "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the 911 Emergency and Trauma Care Fund created by the 911 Emergency and Trauma Care Act. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the 911 Emergency and Trauma Care Fund. The surcharge created by the 911 Emergency and Trauma Care Act shall not be considered General Fund revenues for the purposes of Sections 8 and 8.5 of Article XVI.

Number on ballot

68. **Non-Tribal Commercial Gambling Expansion. Tribal Gaming Compact Amendments. Revenues, Tax Exemptions.**

[Submitted by the initiative and rejected by electors November 2, 2004.]

PROPOSED LAW

THE GAMING REVENUE ACT OF 2004

SECTION 1. Title.

This act shall be known as and may be cited as the "Gaming Revenue Act of 2004." This act may also be cited as the "Gaming Revenue Act" or the "act."

SEC. 2. Findings and Purpose.

The people of the State of California hereby make the following findings and declare that their purpose in enacting this act is as follows:

(a) California now faces an unprecedented budget deficit of billions of dollars that particularly threatens funding for education, police protection, and fire safety. As a result of California's budget crisis, the state needs to find new ways to generate revenues without raising taxes. In March 2000, Proposition 1A was enacted, which triggered an unprecedented expansion of Indian casino gaming, gave Indian tribes a monopoly on casino gaming, and has led to billions of dollars in profits for Indian tribes, but little or no taxes to the state. Moreover, local governments and communities have not been adequately protected, the state does not have sufficient regulation and oversight of tribal casino gaming, and tribal casinos have not complied with state laws applicable to other businesses and designed to protect California citizens, such as laws regarding the environment and political contributions. Gaming tribes also have failed to fully fund a trust fund to promote the welfare of Indian tribes that do not operate large casinos. Some Indian tribes have attempted to acquire land far away from their reservations or traditional lands to be used as casinos and not for use as traditional reservations. Tribes have expended over one hundred twenty million dollars ($120,000,000) in political contributions but have refused to comply with disclosure requirements.

(b) California should request that all Indian gaming tribes voluntarily share some of their gaming profits with the state that can be used to support public education, and local police and fire services, and address other problems associated with tribal casino gaming, and in the event all Indian gaming tribes do not do so, California should grant gaming rights to other persons who will share substantial revenue with the state that can be used to support public education and local police and fire services.

(c) The Governor should be authorized to negotiate amendments to all existing compacts with Indian tribes to allow these Indian tribes to continue to have the exclusive right to operate gaming devices in the State of California if the Indian tribes agree to pay 25 percent of their winnings from such devices to a gaming revenue trust fund and agree to comply with state laws, including laws governing environmental protection, gaming regulation, and campaign contributions and their public disclosure.

(d) In the event all Indian tribes with existing compacts do not agree to these terms, five existing horse racing tracks and 11 existing gambling establishments, where forms of legal gambling and wagering already occur, should have the right to operate a limited number of gaming devices, provided they pay 33 percent of their winnings from the operation of such gaming devices to cities, counties, and a gaming revenue trust fund to be used for education, and police and fire services, and provided they comply with strict legal requirements on the operation and location of such gaming devices.

(e) In addition to paying substantial taxes, the owners of gambling establishments and horse racing tracks authorized to operate gaming devices would have to be licensed by the California Gambling Control Commission under the Gambling Control Act, which requires that they be persons of good character, honesty, and integrity, and persons whose prior activities, reputation and associations entitle them to receive a license from the state.

(f) Permitting five existing horse racing tracks and 11 licensed gambling establishments to operate gaming devices and requiring them to pay 33 percent of their winnings from these gaming devices will generate revenues estimated to exceed one billion dollars ($1,000,000,000) annually. These funds will help alleviate California's dire fiscal crisis, which particularly threatens funding for

education, police protection, and fire safety, and will help mitigate the impact on cities and counties where gaming occurs.

(g) The Gaming Revenue Act will establish the Gaming Revenue Trust Fund, the sole purpose of which will be to ensure that the revenues raised by this act are distributed in accordance with the act. The act will also establish a board of trustees consisting of individuals who are engaged in public school education, law enforcement, and fire protection.

(h) The Gaming Revenue Act will provide funding for the existing Division of Gambling Control and the existing California Gambling Control Commission for the purpose of regulating gaming authorized by this act.

(i) The Gaming Revenue Act will increase the moneys distributed to non-gaming Indian tribes by guaranteeing that each such tribe will receive at least one million two hundred thousand dollars ($1,200,000) annually, and will award three million dollars ($3,000,000) annually to responsible gambling programs.

(j) The Gaming Revenue Act Trust Fund will distribute 50 percent of the net revenues directly to county boards of education to be used to improve educational services for abused and neglected children and children in foster care.

(k) The Gaming Revenue Act Trust Fund will distribute 35 percent of the net revenues directly to local governments for additional neighborhood sheriffs and police officers.

(l) The Gaming Revenue Act Trust Fund will distribute 15 percent of the net revenues directly to local governments for additional firefighters.

(m) The revenues generated for county offices of education for improving the educational outcomes of abused and neglected children and children in foster care and local governments for police protection and fire safety by this act are not to be used as substitute funds but rather shall supplement the total amount of money allocated for county offices of education and local governments.

(n) Indian tribes have attempted to acquire land at locations off of their reservations or distant from their traditional Indian lands to be used solely as casinos and not for use as traditional reservations. Gaming on these newly acquired lands would be detrimental to the surrounding communities. Therefore, the Gaming Revenue Act prohibits the location of gaming establishments by Indian tribes on newly or recently acquired lands.

(o) In order to reasonably restrict the growth of non-Indian gaming, non-Indian gaming authorized by this act will be limited to the sites of five existing horse racing tracks located in the Counties of Alameda, Los Angeles, Orange, and San Mateo, and the sites of 11 existing gambling establishments located in the Counties of Los Angeles, San Diego, Contra Costa, and San Mateo. To ensure that there are no new gambling establishments other than those in existence as of the enactment of the act, the current limitation on the issuance of new gambling licenses, which expires in 2007, will be made permanent. The purpose of such restriction is to exercise control over the proliferation of gambling.

(p) The expansion of Indian gaming has led to conflicts between tribes and local governments. In some cases, tribes have failed to take sufficient steps to address local concerns and impacts. Therefore, this act will authorize the Governor to negotiate amendments to all existing compacts pursuant to which all tribes agree to enter into good faith negotiations with county and city governments to address and mitigate community impacts.

(q) To clarify legal jurisdiction over Indian casinos, state courts should have jurisdiction over any criminal or civil proceeding arising under this act, under a compact, or related to a tribal casino. Therefore, this act will authorize the

Governor to negotiate amendments to all existing compacts pursuant to which all tribes agree that state courts will have jurisdiction over such disputes.

(r) Indian tribes have used their gambling profits to spend well over one hundred twenty million dollars ($120,000,000) on campaign contributions and political activities in California. But some Indian tribes maintain that they are sovereign nations and do not have to comply with California's laws and regulations relating to political contributions and reporting. Because these tribal political expenditures result substantially from, and often concern, gaming activities in California, this act will authorize the Governor to negotiate amendments to all existing compacts pursuant to which all tribes agree to comply with the California Political Reform Act.

(s) While some terms of this act concern conditions tribal casinos must meet if Indian tribes are to retain a monopoly over slot machines, it is the express intent of the voters to raise revenues immediately through this initiative to help solve California's current fiscal crisis, regardless of whether those revenues come from tribal or non-tribal gaming, regardless of court decisions regarding Indian gaming, regardless of changes in federal law, or regardless of any challenges or efforts by the Indian tribes or others to delay or circumvent this act. Therefore, if all Indian tribes with existing compacts do not agree to share with the state 25 percent of their winnings from gaming devices and do not agree to the other conditions on tribal gaming set forth in this act within the time limits provided in this act, it is the express intent of the voters to immediately allow licensed gambling establishments and authorized horse racing tracks to operate a limited number of gaming devices, provided they pay 33 percent of their winnings from the operation of such gaming devices to cities, counties, and the Gaming Revenue Trust Fund.

SEC. 3. Section 19 of Article IV of the California Constitution is amended to read:

Sec. 19. (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c) Notwithstanding subdivision (a), the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

(d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.

(e) The Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.

(f) Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of ~~slot machines~~ *gaming devices* and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, ~~slot machines~~ *gaming devices* , lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

~~(f)~~*(g)* Notwithstanding subdivision (a), the Legislature may authorize private, nonprofit, eligible organizations, as defined by the Legislature, to conduct raffles as a funding mechanism to provide support for their own or another private, nonprofit, eligible organization's beneficial and charitable works, provided that (1) at least 90 percent of the gross receipts from the raffle go directly to

beneficial or charitable purposes in California, and (2) any person who receives compensation in connection with the operation of a raffle is an employee of the private nonprofit organization that is conducting the raffle. The Legislature, two-thirds of the membership of each house concurring, may amend the percentage of gross receipts required by this subdivision to be dedicated to beneficial or charitable purposes by means of a statute that is signed by the Governor.

(h) Notwithstanding subdivisions (e) and (f), and any other provision of state law, the Governor is authorized to negotiate and conclude amendments to all existing compacts with all Indian tribes in accordance with the provisions of this subdivision. An "existing compact" means a gaming compact entered into between the State and an Indian tribe prior to the effective date of the Gaming Revenue Act of 2004. All compacts amended pursuant to this subdivision shall include the following terms, conditions, and requirements:

(1) The Indian tribe shall agree to pay 25 percent of its net win from all gaming devices operated by it or on its behalf to the Gaming Revenue Trust Fund. Such payments shall be made monthly and shall be due within 30 days of the end of each month. "Net win" means the wagering revenue from all gaming devices operated by the Indian tribe or on its behalf retained after prizes or winnings have been paid to players or to pools dedicated to the payment of such prizes and winnings, and prior to the payment of operating or other expenses. Such payments shall commence immediately after federal approval of the amended compact.

(2) The Indian tribe shall agree to report to the Division of Gambling Control the net win on all gaming devices operated by or on behalf of it. Such reports shall be submitted monthly, shall be due within 30 days of the end of each month, and shall be available to the public upon request.

(3) The Indian tribe shall agree to pay for an annual audit performed by an independent firm of certified public accountants approved by the California Gambling Control Commission to ensure that the net win is properly reported and the payment is properly paid to the Gaming Revenue Trust Fund. The audit report shall be available to the public upon request.

(4) The Indian tribe shall agree to comply with the California Political Reform Act.

(5) The Indian tribe shall agree that its casino facilities shall comply with the California Environmental Quality Act.

(6) The Indian tribe shall agree to enter into good faith negotiations with any city or county within which the Indian lands are located where class III gaming is conducted to mitigate local gaming-related impacts within a reasonable time following the State's execution of the compact. The state courts shall have exclusive jurisdiction to resolve any dispute regarding the failure to reach an agreement or the enforcement of the agreement.

(7) The Indian tribe shall agree to comply with all provisions of the Gambling Control Act, and shall agree to be subject to the jurisdiction of the California Gambling Control Commission and Division of Gambling Control.

(8) The Indian tribe shall agree that state courts shall have exclusive jurisdiction over any criminal or civil proceeding arising from or related to the Gaming Revenue Act, arising from or related to the compact, or arising from or related to any act or incident occurring on the premises of a tribal casino.

The powers of the State and the applicability of state law to Indian tribes and Indian casinos pursuant to this subdivision are to be construed consistently with the fullest extent of State's rights and powers under federal law to reach

agreements with Indian tribes with tribal consent. No tribe with an existing compact is required by this subdivision to agree to amend its existing compact. Nothing in the Gaming Revenue Act of 2004 waives or restricts the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. Sec. 1162), and the State may not waive such jurisdiction in any compacts.

(i) Notwithstanding subdivisions (a) and (e), and any other provision of state or local law, in the event amendments to all existing compacts with all Indian tribes, as provided in subdivision (h), are not entered into and submitted to the Secretary of the Interior within 90 days of the effective date of the Gaming Revenue Act of 2004, owners of authorized gambling establishments and owners of authorized horse racing tracks shall immediately thereafter be authorized to operate not more than a combined total of 30,000 gaming devices. In the event tribal monopolies are adjudicated to be illegal, in the event the amended compacts are not approved or considered approved pursuant to the Indian Gaming Regulatory Act, or in the event subdivision (h) is invalidated, or delayed more than 90 days after this act would otherwise take effect, by the State, the federal government, or any court, owners of authorized gambling establishments and owners of authorized horse racing tracks shall immediately thereafter be authorized to operate the gaming devices authorized by this section. For purposes of this act, "authorized gambling establishment" shall mean a site in the Counties of Los Angeles, San Diego, Contra Costa, or San Mateo at which 14 or more gaming tables were authorized to be operated as of September 1, 2003, pursuant to the Gambling Control Act, except such sites that were actually taken into trust for an Indian tribe or Indians after September 1, 2003. For purposes of the Gaming Revenue Act of 2004, "authorized horse racing track" shall mean a site in the Counties of Alameda, Los Angeles, Orange, or San Mateo at which horse racing was conducted by a thoroughbred racing association or quarter horse racing association that was licensed pursuant to the Horse Racing Law to conduct more than 50 days or nights of racing in 2002. For purposes of the Gaming Revenue Act of 2004, "site" shall mean the real property on which an authorized horse racing track or an authorized gambling establishment was located as of September 1, 2003, and shall include real property adjacent to the site. The operation of these gaming devices shall be subject to the following provisions:

(1) Payments.

(A) Owners of authorized gambling establishments and authorized horse racing tracks shall pay 30 percent of the net win from gaming devices operated by them to the Gaming Revenue Trust Fund created pursuant to this section. Such payments shall be made monthly and shall be due within 30 days of the end of each month. "Net win" means the wagering revenue from gaming devices operated pursuant to the Gaming Revenue Act of 2004, retained after prizes or winnings have been paid to players or to pools dedicated to the payment of such prizes and winnings, and prior to the payment of operating or other expenses.

(B) Owners of authorized gambling establishments and authorized horse racing tracks shall report to the Division of Gambling Control the net win on all gaming devices operated by or on behalf of them. Such reports shall be submitted monthly, shall be due within 30 days of the end of each month, and shall be available to the public upon request.

(C) Owners of authorized gambling establishments and authorized horse racing tracks shall pay for an annual audit performed by an independent firm of certified public accountants approved by the California Gambling Control

Commission to ensure that the net win is properly reported and the payment is properly paid to the Gaming Revenue Trust Fund. The audit report shall be available to the public upon request.

(D) Owners of authorized gambling establishments and authorized horse racing tracks shall pay 2 percent of their respective net win from gaming devices operated by them to the city in which each authorized horse racing track and authorized gambling establishment is located. In the event an authorized gambling establishment or an authorized horse racing track is not located within the boundaries of a city, the payment imposed by the Gaming Revenue Act of 2004, shall be made to the county in which the authorized gambling establishment or authorized horse racing track is located. Such payments shall be made monthly and shall be due within 30 days of the end of each month.

(E) Owners of authorized gambling establishments and authorized horse racing tracks shall pay 1 percent of their respective net win from gaming devices operated by them to the county in which each authorized gambling establishment and authorized horse racing track is located. Such payments shall be made monthly and shall be due within 30 days of the end of each month.

(2) Number and Location of Authorized Gaming Devices.

(A) A total of 30,000 gaming devices are authorized to be operated by owners of authorized horse racing tracks and owners of authorized gambling establishments, which are allocated as follows:

(i) For authorized horse racing tracks:

Three thousand gaming devices for each authorized horse racing track. In order to ensure the maximum generation of revenue for the Gaming Revenue Trust Fund, in the event that the owners of an authorized horse racing track for any reason cease to have or lose the right to operate any of the gaming devices authorized by the Gaming Revenue Act of 2004, the gaming devices allocated to that authorized horse racing track shall be reallocated equally among the remaining authorized horse racing tracks. Notwithstanding the limit of 3,000 gaming devices, owners of authorized horse racing tracks may also transfer, sell, license, or assign their rights to own and operate one or more gaming devices to other authorized horse racing tracks or authorized gambling establishments, but in no event shall the total number of gaming devices authorized to be operated at an authorized horse racing track exceed 3,800. The owners of gaming devices that are reallocated, or are transferred, sold, licensed, or assigned pursuant to this clause shall make the distributions required by Section 19609 of the Business and Professions Code.

(ii) For authorized gambling establishments:

(I) Authorized gambling establishments located in Los Angeles County authorized as of September 1, 2003, to operate 100 or more gaming tables shall be authorized to operate 1,700 gaming devices each; authorized gambling establishments in Los Angeles County authorized as of September 1, 2003, to operate between 14 and 99 gaming tables shall be authorized to operate 1,000 gaming devices each; and all other authorized gambling establishments shall be authorized to operate 800 gaming devices each.

(II) Licensed gambling establishments that are not authorized gambling establishments under this section shall be licensed for four gaming devices for each table authorized pursuant to the Gambling Control Act as of September 1, 2003, up to a maximum of 2,000 gaming devices in total, which they cannot operate at their gambling establishments, but may transfer, sell, or assign

the rights to own or operate such gaming devices to authorized gambling establishments.

(III) In order to ensure the maximum generation of revenue for the Gaming Revenue Trust Fund, in the event the owners of an authorized gambling establishment described in subclause (I) for any reason cease to have or lose the right to operate any of the gaming devices authorized by the Gaming Revenue Act of 2004, these gaming devices shall be transferred or allocated to authorized gambling establishments pro rata according to the allocation in subclause (I). Notwithstanding the limitation on gaming devices imposed by subclause (I), authorized gambling establishments may also transfer, sell, license, or assign their rights to own and operate one or more gaming devices to other authorized gambling establishments or authorized horse racing tracks, but in no event shall the total number of gaming devices authorized to be operated at an authorized gambling establishment exceed 1,900.

(IV) In the event that the allocation of gaming devices set forth in clause (ii) exceeds 15,000, the gaming devices authorized pursuant to subclause (II) shall be reduced ratably to bring the total number of gaming devices allocated to all authorized gambling establishments to 15,000 or less.

(B) The owners of an authorized horse racing track may, in accordance with provisions of applicable law, relocate its racing meeting to another site whether or not it is an authorized horse racing track, or discontinue its racing operation. In the event they do so, however, the gaming devices authorized to be operated by them may only be operated at an authorized horse racing track or an authorized gambling establishment.

(C) In order to ensure the maximum generation of revenue for the Gaming Revenue Trust Fund, the owner or operator of an authorized horse racing track and the owner or operator of an authorized gambling establishment whose facilities are located in the same city may agree upon the maximum number of gaming devices that may be operated at each such facility, subject to approval of any such agreement by the California Gambling Control Commission, which shall make its decision of whether to approve any such agreement based upon a determination that any such agreement is in the interests of regulated gaming in the State of California. Any such agreement approved by the California Gambling Control Commission shall not exceed three years in duration.

(3) Suspension of Authorization.

The authorization to operate gaming devices and to transfer, sell, or assign rights to gaming devices pursuant to this subdivision may be suspended by the California Gambling Control Commission for failure to make the payments imposed by this subdivision within 30 days of such payments becoming due.

(4) Prohibition on Additional Fees, Taxes, and Levies.

The payments imposed pursuant to the Gaming Revenue Act of 2004 are in lieu of any and all other fees, taxes, or levies, including, but not limited to, revenue, receipt, or personal property taxes, that may be charged or imposed, directly or indirectly, against authorized horse racing tracks or authorized gambling establishments, their patrons, gaming devices, employers, or suppliers, by the State, cities, or counties, excepting fees, taxes, or levies that were in effect and imposed prior to September 1, 2003, that applied to horse racing and controlled games with cards or tiles, or that are applied generally to commercial activities, including sales and use, income, corporate, or real property taxes. The physical expansion of gaming facilities or the operation of gaming devices authorized

by the Gaming Revenue Act of 2004 shall not be considered an enlargement of gaming operations under any local ordinance related to fees, taxes, or levies.

(5) Licenses.

The owners of authorized gambling establishments and the owners of authorized horse racing tracks shall be licensed by the California Gambling Control Commission under the Gambling Control Act.

(6) Other Laws.

The Gaming Revenue Act of 2004 shall supercede any inconsistent provisions of state, city, or county law relating to gaming devices, including, but not limited to, laws regarding the transportation, manufacture, operation, sale, lease, storage, ownership, licensing, repair, or use of gaming devices authorized in this act. In order to encourage the maximum generation of revenue for the Gaming Revenue Trust Fund, the operation of gaming devices authorized pursuant to the Gaming Revenue Act of 2004 is not subject to any prohibition in state or local law now existing or hereafter enacted.

(j) Gaming Revenue Trust Fund.

(1) There is hereby established the Gaming Revenue Trust Fund in the State Treasury that shall receive all payments pursuant to the requirements of subdivisions (h) and (i).

(2) There is hereby established the board of trustees to administer the Gaming Revenue Trust Fund. The board of trustees shall be comprised of five members appointed by the Governor. Of the five members, two shall be engaged in public school education, one shall be engaged in law enforcement, one shall be engaged in fire protection, and one shall be a certified public accountant. Each member shall be a citizen of the United States and a resident of this state. No more than three of the five members shall be members of the same political party. Of the members initially appointed, two shall be appointed for a term of two years, two shall be appointed for a term of three years, and one shall be appointed for a term of four years. After the initial terms, the term of office of each member shall be four years. The Governor shall appoint the members and shall designate one member to serve as the initial chairperson. The initial chairperson shall serve as chairperson for the length of his or her term. Thereafter, the chairperson shall be selected by the board of trustees. The initial appointments shall be made within three months of the operative date of the Gaming Revenue Act of 2004. The board of trustees shall approve all transfers of moneys from the Gaming Revenue Trust Fund. The board of trustees shall engage an independent firm of certified public accountants to conduct an annual audit of all accounts and transactions of the Gaming Revenue Trust Fund.

(3) The moneys in the Gaming Revenue Trust Fund shall be distributed as follows:

(A) Not more than 1 percent of the moneys annually to the Division of Gambling Control and the California Gambling Control Commission for the cost of carrying out administrative duties pursuant to the Gaming Revenue Act of 2004, and for reimbursement of any state department or agency that provides any service pursuant to the provisions of the Gaming Revenue Act of 2004.

(B) Moneys sufficient to guarantee that each non-gaming tribe shall receive one million two hundred thousand dollars ($1,200,000) annually from the Indian Gaming Revenue Sharing Trust Fund as codified in the Government Code. "Non-gaming tribe" shall mean a federally recognized Indian tribe which operates fewer than 350 gaming devices.

(C) Three million dollars ($3,000,000) to be awarded annually by the board of trustees to responsible gambling programs.

(D) After the distributions required pursuant to subparagraphs (A), (B), and (C), the remaining moneys shall be distributed as follows:

(i) Fifty percent to county offices of education to provide services for abused and neglected children and children in foster care. These moneys shall be allocated to each county office of education according to each county's proportionate share of the annual statewide total of child abuse referral reports for the prior calendar year and shall be used to improve educational outcomes of abused and neglected children and children in foster care. Each county office of education shall allocate these funds to county child protective services agencies to provide these services. Funds received by each county child protective services agency shall be used for the following purposes:

(I) Out-stationing county child protective services social workers in schools.

(II) Providing appropriate caseloads to ensure that professional staff will have sufficient time to provide services necessary to improve the educational outcomes of abused and neglected children and children in foster care.

(III) Providing services to children in foster care to minimize mid-year transfers from school to school.

(IV) Hiring juvenile court workers whose responsibility it is to ensure the implementation of court orders issued by juvenile court judges affecting a foster child's educational performance.

Each county child protective services agency shall be subject to all accountability standards including student performance, enrollment, school stability, and performance measured by the percentage of children at grade level on standardized tests, as provided by state and federal law. Each county child protective services agency shall use funds received pursuant to this section in a manner that maximizes the counties' ability to obtain federal matching dollars for services to children in the child protective services system.

(ii) Thirty-five percent to local governments on a per capita basis for additional neighborhood sheriffs and police officers.

(iii) Fifteen percent to local governments on a per capita basis for additional firefighters.

(k) The Governor shall not consent, concur, or agree to the location of any tribal casinos on newly acquired land pursuant to 25 U.S.C. Sec. 2719(b)(1)(A). Further, any compact entered into by the State pursuant to 25 U.S.C. Sec. 2710(d) shall only be for class III gaming on Indian lands actually taken into trust by the United States for the benefit of an Indian tribe prior to September 1, 2003, except for land contiguous to reservations existing as of that date.

SEC. 4. Section 19609 is added to the Business and Professions Code, to read:

19609. (a) Unless otherwise defined in this chapter, the terms used in this section shall have the meaning ascribed to them in the Gaming Revenue Act of 2004 ("the act").

(b) Three-quarters of 1 percent of the net win from all gaming devices operated by, or on behalf of, owners of authorized horse racing tracks upon which a thoroughbred racing meeting was conducted in 2002 shall be distributed for thoroughbred incentive awards and shall be payable to the applicable official registering agency and thereafter distributed as provided in the California Horse Racing Law.

(c) One and one-half percent of the net win from all gaming devices operated by, or on behalf of, owners of authorized horse racing tracks upon which a thoroughbred racing meeting was conducted in 2002 shall be distributed to each of those thoroughbred racing associations and racing fairs that are not authorized horse racing tracks in the same relative proportions that such thoroughbred racing associations or racing fairs generated commissions during the preceding calendar year. A lessee of an authorized horse racing track as of the effective date of the act shall not be deemed to be an authorized horse racing track for the purposes of this section.

(d) Seventeen and three-quarters percent of the net win from all gaming devices operated by, or on behalf of, owners of authorized horse racing tracks upon which a thoroughbred racing meeting was conducted in 2002 shall be pooled ("the pooled net win") and shall be distributed in the form of purses for thoroughbred horses in accordance with the provisions of this subdivision.

(1) The pooled net win shall be allocated to thoroughbred racing associations and racing fairs throughout the State of California and shall be distributed among each of them in such manner as to equalize on an average daily basis purses for thoroughbred races other than stakes and special events. Notwithstanding the foregoing, pooled net win may be allocated to supplement purses for thoroughbred races so the thoroughbred racing associations and racing fairs may maintain up to their historic relative proportions between overnight races, and stakes races and special events. Increases in the aggregate amount of purses for stakes races of thoroughbred racing associations and racing fairs resulting from pooled net win contributions shall be determined in accordance with an agreement signed by all the thoroughbred racing associations and the organization responsible for negotiating thoroughbred purse agreements on behalf of thoroughbred horsemen.

(2) Notwithstanding the provisions of paragraph (1), the funds distributable to thoroughbred racing associations and racing fairs from the pooled net win shall be allocated in such a manner as to cause average daily purses for thoroughbred races, other than stakes races and special events, to be the percentages of the average daily purses for such races conducted by thoroughbred racing associations in the central and southern zone as set forth below:

(A) Ninety percent for thoroughbred racing associations in the northern zone;

(B) Sixty-five percent for a racing fair in the central zone;

(C) Fifty percent for racing fairs in the northern zone other than the Humboldt County Fair;

(D) Seven and one-half percent for the Humboldt County Fair.

(3) Notwithstanding the provisions of this subdivision to the contrary, the allocation of purses among the thoroughbred racing associations and the racing fairs may be altered upon approval of the California Horse Racing Board, in accordance with an agreement signed by all of the thoroughbred racing associations and the organization responsible for negotiating thoroughbred purse agreements on behalf of horsemen.

(4) The California Horse Racing Board shall be responsible for the oversight of the distribution of the pooled net win in accordance with the provisions of this subdivision.

(e) Eighteen and one-half percent of the net win from all gaming devices operated by owners of an authorized horse racing track upon which a quarter

horse racing meeting was conducted in 2002 shall be paid to supplement purses of races conducted by a quarter horse racing association.

(f) One and four-tenths percent of the net win from gaming devices operated by owners of an authorized horse racing track described in subdivision (e) shall be paid to supplement the purses of harness races conducted by a harness racing association that conducts at least 150 days or nights of harness racing annually at the California Exposition and State Fair, and one-tenth of 1 percent of such net win shall be paid to the harness racing association described in this subdivision.

SEC. 5. Section 19805.5 is added to the Business and Professions Code, to read:

19805.5. As used in this chapter, and in the Gaming Revenue Act of 2004, "gaming device" shall mean and include a slot machine, under state law, or any class III device under the Indian Gaming Regulatory Act. The operation of a gaming device by a tribe, entity, or person authorized to operate gaming devices under the Gaming Revenue Act shall constitute controlled gaming under state law.

SEC. 6. Section 19863 of the Business and Professions Code is amended to read:

19863. A publicly traded racing association or a qualified racing association *, or their successors in interest,* shall be allowed to operate only one ~~gaming~~ *gambling* establishment, and the ~~gaming~~ *gambling* establishment shall be located on the same ~~premises~~ *site* as the entity's racetrack *was located in 2002*.

SEC. 7. Section 19985 is added to the Business and Professions Code, to read:

19985. (a) Except as provided in this section, the Gambling Control Act, including, but not limited to, the jurisdiction and powers of the division and commission to enact regulations, to enforce applicable law, to conduct background investigations, and to issue licenses and work permits, shall apply to authorized horse racing tracks, as defined in the Gaming Revenue Act, and to the operators of gaming devices thereon, including their successors in interest, in and to the same extent the Gambling Control Act applies to gambling establishments.

(b) Employees of authorized horse racing tracks who are not owners, shareholders, partners, or key employees, and whose job responsibilities do not involve controlled games, shall not be required to obtain work permits pursuant to this chapter.

SEC. 8. 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~~ *No* 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~~ *is not intended to prohibit gaming authorized by the Gaming Revenue Act of 2004*.

SEC. 9. 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, *and except as provided in the Gaming Revenue Act of 2004,* the commission ~~may~~ *shall* 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.~~

SEC. 10. Section 19817 of the Business and Professions Code is amended to read:

19817. The commission shall establish and appoint a Gaming Policy Advisory Committee of 10 members. The committee shall be composed of representatives of controlled gambling licensees*, authorized horse racing tracks under the Gaming Revenue Act, representatives of gaming tribes,* and members of the general public ~~in equal numbers~~. The executive director shall, from time to time, convene the committee for the purpose of discussing matters of controlled gambling regulatory policy and any other relevant gambling-related issue. The recommendations concerning gambling policy made by the committee shall be presented to the commission, but shall be deemed advisory and not binding on the commission in the performance of its duties or functions. ~~The committee may not advise the commission on Indian gaming.~~

SEC. 11. Section 12012.6 is added to the Government Code, to read:

12012.6. (a) Notwithstanding Sections 12012.25 and 12012.5, and any other provision of law, the Governor is the designated state officer responsible for negotiating and executing, on behalf of the state, tribal-state gaming compacts with federally recognized Indian tribes located within the State of California pursuant to the federal Indian Gaming Regulatory Act of 1988 (18 U.S.C. Secs. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.) for the purpose of authorizing class III gaming, as defined in that act, on Indian lands within this state. Nothing in this section shall be construed to deny the existence of the Governor's authority to have negotiated and executed tribal-state gaming compacts prior to the effective date of this section.

(b) The Governor shall submit a copy of any executed tribal-state compact to the Secretary of State, who shall forward a copy of the executed compact to the Secretary of the Interior for his or her review and approval, in accordance with paragraph (8) of subsection (d) of Section 2710 of Title 25 of the United States Code.

SEC. 12. Section 12012.75 of the Government Code is amended to read:

12012.75. There is hereby created in the State Treasury a special fund called the "Indian Gaming Revenue Sharing Trust Fund" for the receipt and deposit of moneys derived from gaming device license fees that are paid into the fund pursuant to the terms of tribal-state gaming compacts*, and moneys received from the Gaming Revenue Trust Fund,* for the purpose of making distributions to noncompact tribes. Moneys in the Indian Gaming Revenue Sharing Trust Fund shall be available to the California Gambling Control Commission, upon appropriation by the Legislature, for the purpose of making distributions to noncompact tribes, in accordance with ~~distribution plans specified in~~ *the Gaming Revenue Act and* tribal-state gaming compacts.

SEC. 13. Section 8.3 is added to Article XVI of the California Constitution, to read:

SEC. 8.3. (a) Funds appropriated pursuant to the Gaming Revenue Act of 2004 shall not be deemed to be part of "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as that term is used in paragraphs (2) and (3) of subdivision (b) of Section 8.

(b) Revenues derived from payments made pursuant to the Gaming Revenue Act of 2004 shall not be deemed to be "General Fund revenues , which may be appropriated pursuant to Article XIII B" as that term is used in paragraph (1) of subdivision (b) of Section 8 nor shall they be considered in the determination of "per capita General Fund revenues" as that term is used in paragraph (3) of subdivision (b) and in subdivision (e) of Section 8.

SEC. 14. Section 14 is added to Article XIII B of the California Constitution, to read:

SEC. 14. (a) For purposes of this article, "proceeds of taxes" shall not include the revenues created by the Gaming Revenue Act of 2004.

(b) For purposes of this article, "appropriations subject to limitation" of each entity of government shall not include appropriations of revenues from the Gaming Revenue Trust Fund created by the Gaming Revenue Act of 2004.

SEC. 15. Amendment

The statutory provisions of this act may be amended only by a vote of two-thirds of the membership of both houses of the Legislature. All statutory amendments to this act shall be to further the act and must be consistent with its purposes.

SEC. 16. Consistency With Other Ballot Measures

The provisions of this act are not in conflict with any initiative measure that appears on the same ballot that amends the California Constitution to authorize gaming of any kind. In the event that this act and another measure that amends the California Constitution to permit gaming of any kind are adopted at the same election, the courts are hereby directed to reconcile their respective statutory provisions to the greatest extent possible and to give effect to every provision of both measures.

SEC. 17. Additional Funding

No moneys in the Gaming Revenue Trust Fund shall be used to supplant federal, state, or local funds used for child protective and foster care services, neighborhood sheriffs and police officers, and firefighters but shall be used exclusively to supplement the total amount of federal, state, and local funds allocated for child protective services and foster care which improve the educational outcomes of abused and neglected children and children in foster care and for additional sheriffs, police officers, and firefighters.

SEC. 18. Judicial Proceedings

In any action for declaratory or injunctive relief, or for relief by way of any extraordinary writ, wherein the construction, application, or validity of Section 3 of this act or any part thereof is called into question, a court shall not grant any temporary restraining order, preliminary or permanent injunction, or any peremptory writ of mandate, certiorari, or prohibition, or other provisional or permanent order to restrain, stay, or otherwise interfere with the operation of the act except upon a finding by the court, based on clear and convincing evidence, that the public interest will not be prejudiced thereby, and no such order shall be effective for more than 15 calendar days. A court shall not restrain any part of this act except the specific provisions that are challenged.

SEC. 19. Severability

If any provision of this act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this act that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are severable.

Number on ballot

70. **Tribal Gaming Compacts. Exclusive Gaming Rights. Contributions to State.**

[Submitted by the initiative and rejected by electors November 2, 2004.]

PROPOSED LAW

THE INDIAN GAMING FAIR-SHARE REVENUE ACT OF 2004

SECTION 1. Title

This act shall be known as the "Indian Gaming Fair-Share Revenue Act of 2004."

SEC. 2. Findings and Purpose

The people of the State of California hereby find and declare as follows:

(a) The purpose of the people of the State of California in enacting this measure is to provide a means for California Indian tribes to contribute their fair share of gaming revenues to the State of California. Both the people of California and California Indian tribal governments desire for tribes to assist in restoring financial integrity to the state by contributing an amount that is equivalent to what any private California corporation pays to the state on the net income it earns from its lawful business activities.

(b) In March 2000, the people of the State of California adopted Proposition 1A, which authorized the Governor to negotiate tribal-state gaming compacts with federally recognized Indian tribes for the operation of slot machines and certain casino games on tribal lands in California in accordance with federal law. Proposition 1A was enacted by the people in recognition of the fact that, historically, Indian tribes within the state have long suffered from high rates of unemployment and inadequate educational, housing, elderly care, and health care opportunities, while typically being located on lands that are not conducive to economic development in order to meet those needs.

(c) Since the adoption of Proposition 1A, over 50 Indian tribes have entered into tribal gaming compacts with the State of California. These compacts and the gaming facilities they authorize have assisted Indian tribes throughout the state to move towards economic self-sufficiency by providing a much-needed revenue source for various tribal purposes, including tribal government services and programs such as those that address reservation housing, elderly care, education, health care, roads, sewers, water systems, and other tribal needs. Tribal gaming has also spurred new development, has created thousands of jobs for Indians and non-Indians alike, and has had a substantial positive economic impact on the local communities in which these facilities are located.

(d) Under the existing tribal gaming compacts, Indian tribes also pay millions of dollars each year into two state special funds that are used to provide grants to local governments, to finance programs addressing gambling addiction, to

reimburse the state for the costs of regulating tribal gaming, and to share gaming revenues with other Indian tribes in the state that do not operate gaming facilities. However, because Indian tribes are sovereign governments and are exempt from most forms of taxation, they do not pay any corporate income taxes directly to the state on the profits derived from their gaming operations.

(e) Given California's current fiscal crisis, the state needs to find new ways to generate revenues for the General Fund in the State Treasury. Indian tribes want to and should do their part to assist California in meeting its budget needs by contributing to the state a fair share of the net income they receive from gaming activities in recognition of their continuing right to operate tribal gaming facilities in an economic environment free of competition from casino-style gaming on non-Indian lands. A fair share for the Indian tribes to contribute to the state is an amount that is equivalent to the amount of corporate taxes that a private California corporation pays to the state on the net income it earns from its lawful business activities.

(f) Accordingly, in order to provide additional revenues to the State of California in this time of fiscal crisis, this measure authorizes and requires the Governor to enter into new or amended tribal gaming compacts under which the Indian tribes agree to contribute to the state a fair share of the net income derived from their gaming activities in exchange for the continued exclusive right to operate casino-style gaming facilities in California. In addition, in order to maximize revenues for the state and to permit the free market to determine the number and type of casino games and devices that will exist on tribal lands, this measure requires these new or amended compacts to allow each tribal government to choose the number and size of the gaming facilities it operates, and the types of games offered, that it believes will maximize the tribe's income, as long as the facilities are restricted to and are located in those areas that have been designated by both the State of California and the United States government as tribal lands. Under the new or amended compacts authorized by this measure, Indian tribes must also prepare environmental impact reports analyzing the off-reservation impacts of any proposed new or expanded gaming facilities, and they must consult with the public and local government officials to develop a good-faith plan to mitigate any significant adverse environmental impacts.

SEC. 3. Section 19 of Article IV of the California Constitution is amended to read:

SEC. 19. (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c) Notwithstanding subdivision (a), the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

(d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.

(e) The Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.

(f) Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of ~~lottery games and banking and percentage card games~~ *any and all forms of Class III gaming* by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery

games, *roulette, craps,* ~~and~~ banking and percentage card games *, and any and all other forms of casino gaming* are hereby *specifically* permitted to be conducted and operated on tribal lands subject to those compacts.

~~(f)~~ *(g)* Notwithstanding subdivision (a), the Legislature may authorize private, nonprofit, eligible organizations, as defined by the Legislature, to conduct raffles as a funding mechanism to provide support for their own or another private, nonprofit, eligible organization's beneficial and charitable works, provided that (1) at least 90 percent of the gross receipts from the raffle go directly to beneficial or charitable purposes in California, and (2) any person who receives compensation in connection with the operation of a raffle is an employee of the private nonprofit organization that is conducting the raffle. The Legislature, two-thirds of the membership of each house concurring, may amend the percentage of gross receipts required by this subdivision to be dedicated to beneficial or charitable purposes by means of a statute that is signed by the Governor.

(h) Notwithstanding subdivisions (e) and (f), and any other provision of state law, within 30 days of being requested to do so by any federally recognized Indian tribe, the Governor is authorized, directed, and required to amend any existing compact with any Indian tribe, and to offer a new compact to any federally recognized Indian tribe without an existing compact, in accordance with the provisions of this subdivision. An "existing compact" means a gaming compact entered into between the State and an Indian tribe that was ratified prior to the effective date of the Indian Gaming Fair-Share Revenue Act of 2004. Any existing compact that is amended pursuant to this subdivision shall not require legislative ratification, but any new compact entered into pursuant to this subdivision shall be submitted to the Legislature within 15 days after the conclusion of negotiations and shall be deemed ratified if it is not rejected by each house of the Legislature, two-thirds of the members thereof concurring in the rejection, within 30 days of the submission of the compact to the Legislature by the Governor, except that if this 30-day period ends during a joint recess of the Legislature, the period shall be extended until the tenth day following the day on which the Legislature reconvenes. All compacts amended pursuant to this subdivision, and all new compacts entered into pursuant to this subdivision, shall include the following terms, conditions, and requirements:

(1) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision shall agree under the terms of the compact to contribute to the State, on a sovereign-to-sovereign basis, a percentage of its net income from gaming activities that is equivalent to the amount of revenue the State would receive on the same amount of net business income earned by a private, non-exempt California corporation based upon the then-prevailing general corporate tax rate under the state Revenue and Taxation Code. This contribution shall be made in consideration for the exclusive right enjoyed by Indian tribes to operate gaming facilities in an economic environment free of competition for slot machines and other forms of Class III casino gaming on non-Indian lands in California. The compact shall provide that in the event the Indian tribes lose their exclusive right to operate slot machines and other forms of Class III casino gaming in California, the obligation of the Indian tribe to contribute to the State a portion of its net income from gaming activities pursuant to this subdivision shall cease. Contributions made to the State pursuant to this subdivision shall be in lieu of any and all other fees, taxes, or levies that

may be charged or imposed, directly or indirectly, by the State, cities, or counties against the Indian tribe on its authorized gaming activities, except that a tribe amending an existing compact or entering into a new compact pursuant to this subdivision shall be required to make contributions to the Revenue Sharing Trust Fund and, if the tribe operated gaming devices on September 1, 1999, to the Special Distribution Fund, in amounts and under terms that are identical to those contained in the existing compacts.

(2) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision shall agree under the terms of the compact to adopt an ordinance providing for the preparation, circulation, and consideration by the tribe of an environmental impact report analyzing potential off-reservation impacts of any project involving the development and construction of a new gaming facility or the significant expansion, renovation, or modification of an existing gaming facility. The environmental impact report prepared in accordance with this subdivision shall incorporate the policies and objectives of the National Environmental Policy Act and the California Environmental Quality Act consistent with the tribe's governmental interests. Prior to the commencement of any such project, the tribe shall also agree (A) to inform and to provide an opportunity for the public to submit comments regarding the planned project, (B) to consult with local governmental officials regarding mitigation of significant adverse off-reservation environmental impacts and to make good-faith efforts to mitigate any and all such significant adverse off-reservation environmental impacts, and (C) to keep local governmental officials and potentially affected members of the public informed of the project's progress.

(3) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision shall be entitled under the terms of the compact to operate and conduct any forms and kinds of gaming authorized and permitted pursuant to subdivision (f).

(4) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision shall be entitled under the terms of the compact to operate as many slot machines and to conduct as many games as each tribal government deems appropriate. There shall likewise be no limit under the terms of the compact on the number or the size of gaming facilities that each tribe may establish and operate, provided that each and every such gaming facility must be owned by the tribe and operated only on Indian lands on which such gaming may lawfully be conducted under federal law.

(5) The initial term of any new or amended compact entered into pursuant to this subdivision shall be 99 years, and the compact shall be subject to renewal upon mutual consent of the parties. The terms and conditions of any new or amended compact entered into pursuant to this subdivision may be amended at any time by the mutual and written agreement of both parties.

(6) Any Indian tribe with an existing compact that wishes to enter into an amended compact pursuant to this subdivision shall not be required as a condition thereof to make any other amendments to its existing compact or to agree to any other terms, conditions, or restrictions beyond those contained in this subdivision and in its existing compact, except as the provisions of its existing compact may be modified in accordance with paragraphs (1) to (5), inclusive.

SEC. 4. Section 12012.80 is added to the California Government Code, to read:

12012.80. Indian Gaming Fair-Share Revenue Fund

(a) There is hereby created in the State Treasury a fund called the "Indian Gaming Fair-Share Revenue Fund" for the receipt and deposit of moneys received by the state from Indian tribes under the terms of tribal-state gaming compacts entered into or amended pursuant to subdivision (h) of Section 19 of Article IV of the California Constitution.

(b) Moneys in the Indian Gaming Fair-Share Revenue Fund shall be available for appropriation by the Legislature for any purpose specified by law.

SEC. 5. Inconsistency With Other Ballot Measures

The provisions of this act shall be deemed to conflict with and to be inconsistent with any other initiative measure that appears on the same ballot that amends the California Constitution relating to gaming by federally recognized Indian tribes in California. In the event that this act and another measure that amends the California Constitution relating to gaming by Indian tribes are adopted at the same election, the measure receiving the greater number of affirmative votes shall prevail in its entirety, and no provision of the measure receiving the fewer number of affirmative votes shall be given any force or effect.

SEC. 6. Severability

If any provision of this act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this act that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are severable.

INITIATIVE STATUTE

Number on ballot

66. **Limitations on "Three Strikes" Law. Sex Crimes. Punishment.**

[Submitted by the initiative and rejected by electors November 2, 2004.]

PROPOSED LAW

THE THREE STRIKES AND CHILD PROTECTION ACT OF 2004

SECTION 1. Title

This initiative shall be known and may be cited as the Three Strikes and Child Protection Act of 2004.

SEC. 2. Findings and Declarations

The people of the State of California do hereby find and declare that:

(a) Proposition 184 (the "Three Strikes" law) was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences of repeat offenders who commit serious and/or violent felonies;

(b) Proposition 184 did not set reasonable limits to determine what criminal acts to prosecute as a second and/or third strike; and

(c) Since its enactment, Proposition 184 has been used to enhance the sentences of more than 35,000 persons who did not commit a serious and/or violent crime against another person, at a cost to taxpayers of more than eight hundred million dollars ($800,000,000) per year.

SEC. 3. Purposes

The people do hereby enact this measure to:

(a) Continue to protect the people from criminals who commit serious and/or violent crimes;

(b) Ensure greater punishment and longer prison sentences for those who have been previously convicted of serious and/or violent felonies, and who commit another serious and/or violent felony;

(c) Require that no more than one strike be prosecuted for each criminal act and to conform the burglary and arson statutes; and

(d) Protect children from dangerous sex offenders and reduce the cost to taxpayers for warehousing offenders who commit crimes that do not qualify for increased punishment according to this act.

SEC. 4. Sex Offenders of Children

Section 289 of the Penal Code is amended to read:

289. (a) (1) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(d) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this

subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(e) Any person who commits an act of sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(f) Any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(h) Except as provided in Section 288, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in the county jail for a period of not more than one year.

(i) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony.

(j) *(1)* Any person who participates in an act of sexual penetration *or oral copulation* with another person who is under 14 years of age and who is more than 10 years younger than he or she shall be punished by imprisonment in the state prison for ~~three,~~ six, ~~or~~ eight ~~years,~~ *or twelve years and receive counseling during the imprisonment and for a period of at least one year following release. This counseling shall be structured in a way so that it does not endanger the prisoner's life or safety .*

(2) A second conviction of this offense, pled and proved separately, will result in imprisonment in the state prison for 25 years to life. If the victim is under the age of 10 on the first offense the prosecution may seek a sentence of 25 years to life, but the court retains discretion to sentence under paragraph (1).

(k) As used in this section:

(1) "Sexual penetration" is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.

(2) "Foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.

(3) "Unknown object" shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

(l) As used in subdivision (a), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

SEC. 5. Amendments to Section 667 of the Penal Code

Section 667 of the Penal Code is amended to read:

667. (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means ~~a~~ *any* serious felony listed in subdivision (c) of Section 1192.7 ~~:~~ *as amended by the Three Strikes and Child Protection Act of 2004.*

(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the ~~Legislature~~ *people of the State of California* in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a *serious and/or violent* felony and have been previously convicted of serious and/or violent felony offenses.

(c) Notwithstanding any other *provision of* law, if a defendant has been convicted of a *serious and/or violent* felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions *that were brought and tried separately* as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent *serious and/or violent* felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent* felony conviction and the current *serious and/or violent* felony conviction shall not affect the imposition of *the* sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one *serious and/or violent* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious ~~or~~ *and/or* violent felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a *serious and/or violent* felony shall be defined as *any of the following* :

(1) Any offense defined in subdivision (c) of Section 667.5 *as amended by the Three Strikes and Child Protection Act of 2004* as a violent felony or any offense defined in subdivision (c) of Section 1192.7 *as amended by the Three Strikes and Child Protection Act of 2004* as a serious felony in this state *and the conviction(s) were brought and tried separately* . The determination of whether a prior conviction is a prior *serious and/or violent* felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior *serious and/or violent* felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an

offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 *as amended by the Three Strikes and Child Protection Act of 2004 and the conviction(s) were brought and tried separately* .

(3) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if *all of the following are true* :

(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(B) The prior offense is *described in subdivision (c) of Section 667.5 or described in subdivision (c) of Section 1192.7 as amended by the Three Strikes and Child Protection Act of 2004 or is one of the following offenses* listed in subdivision (b) of Section 707 of the Welfare and Institutions Code ~~or described in paragraph (1) or (2) as a felony~~ *as amended by the Three Strikes and Child Protection Act of 2004* .

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code *as amended by the Three Strikes and Child Protection Act of 2004* .

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior *serious and/or violent* felony conviction:

(1) If a defendant has one prior *serious and/or violent* felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current *serious and/or violent* felony conviction.

(2) (A) If a defendant has *been convicted of a serious and/or violent felony, as defined in Section 667.5 or 1192.7, or Section 707 of the Welfare and Institutions Code, as amended by the Three Strikes and Child Protection Act of 2004, and* has two or more prior *serious and/or violent* felony convictions as defined in subdivision (d) that have been pled and proved *and that were brought and tried separately* , the term for the current *serious and/or violent* felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater~~ *greatest* of *the following* :

(i) Three times the term otherwise provided as punishment for each current *serious and/or violent* felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a prior *serious and/or violent* felony conviction as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(g) Prior felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as ~~they existed on June 30, 1993~~ *amended by the Three Strikes and Child Protection Act of 2004* .

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 6. Amendments to Section 667.1 of the Penal Code

Section 667.1 of the Penal Code is amended to read:

667.1. Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after the effective date of ~~this act~~ *the Three Strikes and Child Protection Act of 2004* , all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they ~~existed on the effective date of this act, including amendments made to those statutes by this act~~ *are amended by that act* .

SEC. 7. Amendments to Section 667.5 of the Penal Code

Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional

term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable *on the first conviction* by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant ~~inflicts~~ *specifically intends to personally inflict* great bodily injury on any person other than an accomplice *and in which the defendant acts to personally inflict great bodily injury on any person other than an accomplice and* which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July l, 1977, in Sections 213, 264, and 461, or any felony in which the defendant *personally* uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310.

(14) Kidnapping.

(15) Assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) A violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1 *(c)* , which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or

until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 8. Amendments to Section 1170.12 of the Penal Code

Section 1170.12 of the Penal Code is amended to read:

1170.12. (a) *It is the intent of the people of the State of California, in amending this section pursuant to the Three Strikes and Child Protection Act of 2004, to ensure longer prison sentences and greater punishment for those who commit a serious and/or violent felony and have been previously convicted of serious and/or violent felony offenses.*

(b) Notwithstanding any other provision of law, if a defendant has been convicted of a *serious and/or violent* felony and it has been pled *,* ~~and~~ proved

and that were brought and tried separately that the defendant has *been convicted of* one or more prior *serious and/or violent* felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent* felony conviction and the current *serious and/or violent* felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one *serious and/or violent* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section ~~:~~ *, and*

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6) of this subdivision, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

~~(b)~~ *(c)* Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a *serious and/or violent* felony shall be defined as ~~:~~ *any offense defined in subdivision (c) of Section 667.5 or in subdivision (c) of Section 1192.7, as amended by the Three Strikes and Child Protection Act of 2004.*

~~(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state.~~ The determination of whether a prior conviction is a prior *serious and/or violent* felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior *serious and/or violent* felony for purposes of this section:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

~~(2)~~ *(3)* A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular *serious and/or violent* felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular *serious and/or violent* felony as defined ~~in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7~~ *by the Three Strikes and Child Protection Act of 2004 and that was brought and tried separately* .

~~(3)~~ *(4)* A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if *all of the following are true* :

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense ~~, and~~ .

(B) The prior offense is

~~(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or~~

~~(ii) listed in this subdivision as a felony, and~~ *described in paragraph (1) or (2) as a serious and/or violent felony as amended by the Three Strikes and Child Protection Act of 2004, or is one of the following offenses listed in subdivision (b) of Section 707 of the Welfare and Institutions Code as amended by the Three Strikes and Child Protection Act of 2004:*

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law ~~, and~~ .

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

~~(c)~~ *(d)* For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has a prior *serious and/or violent* felony conviction:

(1) If a defendant has one prior *serious and/or violent* felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current *serious and/or violent* felony conviction.

(2) (A) If a defendant has *been convicted of a serious felony, as defined in Section 1192.7 as amended by the Three Strikes and Child Protection Act of 2004, or a violent felony, as defined in Section 667.5, as amended by the Three Strikes and Child Protection Act of 2004, and has* two or more prior *serious and/or violent* felony convictions, as defined in ~~paragraph (1) of subdivision (b),~~ *Sections 667.5, 1192.7 or Section 707 of the Welfare and Institutions Code, as amended by the Three Strikes and Child Protection Act of 2004,* that have been pled , ~~and~~ proved, *and that were brought and tried separately* the term for the current *serious and/or violent* felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater~~ *greatest* of *the following:*

(i) ~~three~~ *Three* times the term otherwise provided as punishment for each current *serious and/or violent* felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions ~~, or~~ .

(ii) ~~twenty-five years or~~ *Imprisonment in the state prison for 25 years.*

(iii) ~~the~~ *The* term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5

(commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

~~(d)~~ *(e)* (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior *serious and/or violent* felony conviction as ~~defined in this~~ *amended* ~~section~~ *by the Three Strikes and Child Protection Act of 2004* . The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

~~(e)~~ *(f)* Prior felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (d).

(g) All references to existing statutes in subdivisions (b) to (f), inclusive, are to statutes as amended by the Three Strikes and Child Protection Act of 2004.

(h) If any provision of subdivisions (a) to (g), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

SEC. 9. Amendments to 1192.7 of the Penal Code

Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter;

(2) mayhem;

(3) rape;

(4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;

(5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;

(6) lewd or lascivious act on a child under the age of 14 years;

(7) any felony *which on the first offense is* punishable by death or imprisonment in the state prison for life;

(8) any felony in which the defendant *specifically intends to* personally ~~inflicts~~ *inflict* great bodily injury on any person, other than an accomplice, *and in which the defendant acts to personally inflict great bodily injury on any person other than an accomplice* or any felony in which the defendant personally uses a firearm;

(9) attempted murder;

(10) assault with intent to commit rape or robbery;

(11) assault with a deadly weapon or instrument on a peace officer;

(12) assault by a life prisoner on a noninmate;

(13) assault with a deadly weapon by an inmate;

(14) arson *as provided in subdivision (a) or (b) of Section 451* ;

(15) exploding a destructive device or any explosive with intent to injure;

(16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;

(17) exploding a destructive device or any explosive with intent to murder;

(18) any burglary of the first degree *as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary* ;

(19) *armed* robbery or bank robbery;

(20) kidnapping;

(21) holding of a hostage by a person confined in a state prison;

(22) attempt to commit a felony punishable by death or imprisonment in the state prison for life;

(23) any felony in which the defendant personally used a dangerous or deadly weapon;

(24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code;

(25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;

(26) grand theft involving a firearm;

(27) carjacking;

~~(28) Any felony offense, which would also constitute a felony violation of Section 186.22;~~

~~(29)~~ *(28)* assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220;

~~(30)~~ *(29)* throwing acid or flammable substances, in violation of Section 244;

~~(31)~~ *(30)* assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245;

~~(32)~~ *(31)* assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5;

~~(33)~~ *(32)* discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246;

~~(34)~~ *(33)* commission of rape or sexual penetration in concert with another person, in violation of Section 264.1;

~~(35)~~ *(34)* continuous sexual abuse of a child, in violation of Section 288.5;

~~(36)~~ *(35)* shooting from a vehicle, in violation of subdivision (c) or (d) of Section 12034;

~~(37)~~ *(36)* intimidation of victims or witnesses, in violation of *subdivision (c) of* Section 136.1;

~~(38)~~ *(37)* ~~criminal threats in violation of Section 422;~~

~~(39)~~ *(38)* any attempt to commit a crime listed in this subdivision other than an assault *or burglary* ;

~~(40)~~ *(39)* any violation of Section 12022.53;

~~(41)~~ *(40)* a violation of subdivision (b) or (c) of Section 11418; ~~and~~

~~(42)~~ *(41)* any conspiracy to commit an offense described in this subdivision *, other than assault* .

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 10. Amendments to Section 707 of the Welfare and Institutions Code

Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) (1) In any case in which a minor is alleged to be a person described in Section 602 (a) by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for

a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(2) This paragraph shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she has attained the age of 16 years, of any felony offense when the minor has been declared to be a ward of the court pursuant to Section 602 on one or more prior occasions if both of the following apply:

(A) The minor has previously been found to have committed two or more felony offenses.

(B) The offenses upon which the prior petition or petitions were based were committed when the minor had attained the age of 14 years.

Upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating and mitigating circumstances in evaluating each of the above criteria. In any case in which the hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing. If the minor is found to be a fit and proper subject to be dealt with under the juvenile court law pursuant to this subdivision, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.

(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Youth Authority in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

~~(16) Any offense described in Section 1203.09 of the Penal Code.~~

~~(17)~~ *(16)* Any offense described in Section 12022.5 or 12022.53 of the Penal Code.

~~(18)~~ *(17)* Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

~~(19)~~ *(18)* Any felony offense described in *subdivision (c) of* Section 136.1 or *subdivision (b) of Section* 137 of the Penal Code.

~~(20)~~ *(19)* Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

~~(21)~~ *(20)* Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

~~(22)~~ *(21)* Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

~~(23)~~ *(22)* Torture as described in Sections 206 and 206.1 of the Penal Code.

~~(24)~~ *(23)* Aggravated mayhem, as described in Section 205 of the Penal Code.

~~(25)~~ *(24)* Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

~~(26)~~ *(25)* Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

~~(27)~~ *(26)* Kidnapping, as punishable in Section 209.5 of the Penal Code.

~~(28)~~ *(27)* The offense described in subdivision (c) of Section 12034 of the Penal Code.

~~(29)~~ *(28)* The offense described in Section 12308 of the Penal Code.

~~(30)~~ *(29)* Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing. If, pursuant to this subdivision, the minor is

found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Youth Authority in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(d) (1) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing an offense enumerated in subdivision (b).

(2) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading against a minor 14 years of age or older in a court of criminal jurisdiction in any case in which any one or more of the following circumstances apply:

(A) The minor is alleged to have committed an offense which if committed by an adult would be punishable by death or imprisonment in the state prison for life.

(B) The minor is alleged to have personally used a firearm during the commission or attempted commission of a felony, as described in Section 12022.5 of the Penal Code.

(C) The minor is alleged to have committed an offense listed in subdivision (b) in which any one or more of the following circumstances apply:

(i) The minor has previously been found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b).

(ii) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, as defined in subdivision (f) of Section 186.22 of the Penal Code, with the specific intent to promote, further, or assist in any criminal conduct by gang members.

(iii) The offense was committed for the purpose of intimidating or interfering with any other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceives that the other person has one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.6) of Part 1 of the Penal Code.

(iv) The victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.

(3) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing one of the following offenses, if the minor has previously been found to be a person described in Section 602 by reason of the violation of any felony offense, when he or she was 14 years of age or older:

(A) Any felony offense in which it is alleged that the victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense;

(B) Any felony offense committed for the purposes of intimidating or interfering with any other person's free exercise or enjoyment of any right secured

to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceived that the other person had one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.6) of Part 1 of the Penal Code; or

(C) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang as prohibited by Section 186.22 of the Penal Code.

(4) In any case in which the district attorney or other appropriate prosecuting officer has filed an accusatory pleading against a minor in a court of criminal jurisdiction pursuant to the provisions of this subdivision, the case shall then proceed according to the laws applicable to a criminal case. In conjunction with the preliminary hearing as provided for in Section 738 of the Penal Code, the magistrate shall make a finding that reasonable cause exists to believe that the minor comes within the provisions of this subdivision. If reasonable cause is not established, the criminal court shall transfer the case to the juvenile court having jurisdiction over the matter.

(5) For any offense for which the prosecutor may file the accusatory pleading in a court of criminal jurisdiction pursuant to this subdivision, but elects instead to file a petition in the juvenile court, if the minor is subsequently found to be a person described in subdivision (a) of Section 602, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.

(6) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Youth Authority in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(e) Any report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.

SEC. 11. Release of Qualified Individuals

Any individual sentenced under the prior Three Strikes law, including, but not limited to, paragraph (2) of subdivision (e) of Section 667 of the Penal Code, paragraph (2) of subdivision (c) of Section 1170.12 of the Penal Code, and/or Section 707 of the Welfare and Institutions Code, for an enhanced conviction that would not qualify for enhancement under this statute, shall qualify for resentencing and be remanded to the court of origin for resentencing, subject to the following conditions:

(a) A person who was convicted of a felony and is currently serving an indeterminate term of life in prison for a felony, if the following apply:

(1) The person was sentenced pursuant to Section 667 or 1170.12, or both, of the Penal Code and/or Section 707 of the Welfare and Institutions Code prior to those sections being amended by this act.

(2) The currently charged felony resulting in the imposition of an indeterminate term of life in prison was not described as a violent or serious felony pursuant to this act.

(b) A person who is currently serving an indeterminate term of life in prison for a felony by virtue of a plea, if the following apply:

(1) The person was sentenced pursuant to Section 667 or 1170.12, or both, of the Penal Code, and/or Section 707 of the Welfare and Institutions Code, prior to those sections being amended by this act.

(2) The currently charged felony resulting in the imposition of an indeterminate term of life in prison was not described as a violent or serious felony pursuant to this act.

(c) The person agrees before the court pursuant to subdivision (b) shall, in the written motion, expressly waive double jeopardy for purposes of resentencing, in regard to any charges arising out of the same set of operative facts resulting in the plea, for charges that were not filed, or were dismissed pursuant to the plea.

(d) If the court determines that the person was sentenced pursuant to the Three Strikes statutes prior to their amendment by this act, and the person meets the requirements of either subdivision (a) or (b), the court shall order that person to be resentenced, subject to subdivision (f), and in compliance with the sentencing laws as amended by this act.

(1) If the court grants resentencing for a person meeting the requirements of subdivision (a), the district attorney may also file any charges based on the same set of operative facts that resulted in the conviction, that were not filed in connection with the conviction, and for which the statute of limitations has not expired.

(2) If the court grants resentencing for a person meeting the requirements of subdivision (b), a district attorney seeking to file or refile charges arising out of the same set of operative facts resulting in the plea that were not filed or were dismissed pursuant to the plea shall obtain the court's permission to file or refile those charges. The district attorney shall have to show by a preponderance of the evidence that the charges would have been filed, or would not have been dismissed, but for the plea.

(f) A person who meets the requirements of subdivision (a) or (b) shall be entitled to representation by counsel under this section, and for the purposes of resentencing, trial, or retrial. The person may request appointment of counsel by sending a written request to the court.

(j) The case shall be heard by the judge who conducted the trial, or accepted the convicted person's plea of guilty or nolo contendere, unless the presiding judge determines that judge is unavailable. Upon request of either party, the court may order, in the interest of justice, that the convicted person be present at the hearing of the motion.

(k) Notwithstanding any other provision of law, the right to resentencing pursuant to this act is absolute and shall not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendere.

(l) Those qualifying individuals shall be remanded to court and re-sentenced within no less than 30 days, and no more than 180 days, of this act becoming effective, unless the qualifying individual personally waives this right during the 180-day time period.

(m) Nothing in this section shall be construed as limiting the grounds for a writ of habeas corpus, or as precluding any other remedy.

(n) Under no circumstances may the resentencing, trial, or retrial of any individual pursuant to this section result in a sentence that is longer than the current sentence.

(o) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12. Liberal Construction

This act is an exercise of the public power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate these purposes.

SEC. 13. Severability

The provisions of this act are severable. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 14. Conflicting Measures

If this measure is approved by the voters, but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this act shall be self-executing and given the full force of law.

SEC. 15. Effective Date

This act shall become effective immediately upon its approval by the voters.

SEC. 16. Self-Execution

This act shall be self-executing.

SEC. 17. Amendment

This act shall not be altered or amended except by one of the following:

(a) By statute passed in each house of the Legislature, by rollcall vote entered in the journal, with two-thirds of the membership and the Governor concurring, or

(b) By statute passed in each house of the Legislature, by rollcall vote entered in the journal, with a majority of the membership concurring, to be placed on the next general ballot, and with the majority of the electors concurring, or

(c) By statute that becomes effective when approved by a majority of the electors.

REFERENDUM STATUTE

Number on ballot

72. **Health Care Coverage Requirements.** (Statutes 2003, Chapter 673, SB 2)

[Submitted by the referendum and rejected by electors November 2, 2004.]

PROPOSED LAW

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 Section 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.

LIST OF OFFICERS

LIST OF OFFICERS

2004

STATE CAPITOL AND OTHER BUILDINGS

Sacramento 95814

Name	Office	Residence
Arnold Schwarzenegger	Governor	Los Angeles
Cruz Bustamante	Lieutenant Governor	Elk Grove
Kevin Shelley	Secretary of State	San Francisco
Steve Westly	Controller	Atherton
Philip Angelides	Treasurer	Sacramento
Bill Lockyer	Attorney General	Hayward
John Garamendi	Insurance Commissioner	Walnut Grove
Jack O'Connell	Superintendent of Public Instruction	San Luis Obispo
Diane F. Boyer-Vine	Legislative Counsel	Sacramento

OFFICE OF GOVERNOR

Patricia T. Clarey ..... Chief of Staff
Randall J. Hernandez ..... Appointments Secretary
Vacant ..... Judicial Appointments Secretary
Marybel Batjer ..... Cabinet Secretary
Peter Siggins ..... Legal Affairs
Richard Costigan ..... Legislative Affairs
Margita Thompson ..... Press Secretary
Julie Westlake ..... Director of Scheduling
Rob Stutzman ..... Director of Communications
Vacant ..... Director of Planning & Research
Ed Reno ..... Director of Advance
Vacant ..... Policy Director

Offices: State Capitol, Sacramento 95814

STATE BOARD OF EQUALIZATION

450 N Street, Sacramento 95814

Name	Office	Residence
Carole Migden	Board Member, First District	San Francisco
Bill Leonard	Board Member, Second District	Sacramento
Claude Parrish	Board Member, Third District	Long Beach
John Chiang	Board Member, Fourth District	Los Angeles
Steve Westly (Controller)	Ex-Officio Member	Atherton

LEGISLATIVE DEPARTMENT

UNITED STATES SENATORS

Dianne Feinstein (D)..... 331 Hart Senate Office Building
Washington, D.C. 20510
One Post Street, #2450, San Francisco 94104

Barbara Boxer (D)..... 112 Hart Senate Office Building
Washington, D.C. 20510
1700 Montgomery Street, #240, San Francisco 94111

REPRESENTATIVES IN CONGRESS

Name	Party	District	Counties	Main District Office*
Baca, Joe	D	43	San Bernardino	201 N.E. Street, Suite 102 San Bernardino 92401
Becerra, Xavier	D	31	Los Angeles	1910 Sunset Blvd., #560 Los Angeles 90026
Berman, Howard L.	D	28	Los Angeles	14546 Hamlin St., Suite 202 Van Nuys 91411
Bono, Mary	R	45	Riverside	707 Tahquitz Canyon Way, Suite 9 Palm Springs 92262
Calvert, Ken	R	44	Orange, Riverside	3400 Central Ave., #200 Riverside 92506
Capps, Lois	D	23	San Luis Obispo, Santa Barbara, Ventura	1216 State St., #403 Santa Barbara 93101
Cardoza, Dennis	D	18	Fresno, Madera, Merced, San Joaquin, Stanislaus	920 16th Street, Suite C Modesto 95354
Cox, Christopher	R	48	Orange	One Newport Pl., #1010 Newport Beach 92660
Cunningham, Randy "Duke"	R	50	San Diego	613 West Valley Parkway, #320 Escondido 92025
Davis, Susan A.	D	53	San Diego	4305 University Ave., Suite 515 San Diego 92105
Dooley, Calvin M.	D	20	Fresno, Kern, Kings	1060 Fulton Mall, #1015 Fresno 93721
Doolittle, John T.	R	4	Butte, El Dorado, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Sierra	4230 Douglas Blvd., #200 Granite Bay 95746
Dreier, David	R	26	Los Angeles, San Bernardino	2220 E. Route 66, Suite 225 Glendora 91740
Eshoo, Anna G.	D	14	San Mateo, Santa Clara, Santa Cruz	698 Emerson St. Palo Alto 94301
Farr, Sam	D	17	Monterey, San Benito, Santa Cruz	100 W. Alisal St. Salinas 93901
Filner, Bob	D	51	Imperial, San Diego	333 F St., Suite A Chula Vista 91910
Gallegly, Elton	R	24	Santa Barbara, Ventura	300 East Esplanade Drive, Suite 1800 Oxnard 93030
Harman, Jane	D	36	Los Angeles	2321 E. Rosecrans Ave., Suite 3270 El Segundo 90245
Herger, Wally	R	2	Butte, Colusa, Glenn, Shasta, Siskiyou, Sutter, Tehama, Trinity, Yolo, Yuba	55 Independence Circle, #104 Chico 95973
Honda, Michael M.	D	15	Santa Clara	3550 Stevens Creek Blvd., Suite 330 San Jose 95117
Hunter, Duncan	R	52	San Diego	366 South Pierce St. El Cajon 92020
Issa, Darrell	R	49	Riverside, San Diego	1800 Thibodo Road, Suite 310 Vista 92083
Lantos, Tom	D	12	San Francisco, San Mateo	400 S. El Camino Real, #410 San Mateo 94402
Lee, Barbara	D	9	Alameda	1301 Clay St., #1000N Oakland 94612

REPRESENTATIVES IN CONGRESS—Continued

Name	Party	District	Counties	Main District Office*
Lewis, Jerry	R	41	Riverside, San Bernardino	1150 Brookside Ave., #J-5 Redlands 92373
Lofgren, Zoe	D	16	Santa Clara	635 N. First St., Suite B San Jose 95112
Matsui, Robert T.	D	5	Sacramento	501 I St., #12-600 Sacramento 95814
McKeon, Howard P. "Buck"	R	25	Inyo, Los Angeles, Mono, San Bernardino	23929 Valencia Blvd., #410 Santa Clarita 91355
Millender-McDonald, Juanita	D	37	Los Angeles	970 W. 190th St., E. Tower, #900 Torrance 90502
Miller, Gary G.	R	42	Los Angeles, Orange, San Bernardino	1800 E. Lambert Road, Suite 150 Brea 92821
Miller, George	D	7	Contra Costa, Solano	1333 Willow Pass Road, #203 Concord 94520
Napolitano, Grace F.	D	38	Los Angeles	11627 E. Telegraph Road, #100 Santa Fe Springs 90670
Nunes, Devin	R	21	Fresno, Tulare	4100 Truxtun Avenue, Suite 220 Bakersfield 93309
Ose, Doug	R	3	Alpine, Amador, Calaveras, Sacramento, Solano	722 B Main Street, Woodland 95695
Pelosi, Nancy	D	8	San Francisco	450 Golden Gate Ave., Room 145380 San Francisco 94102
Pombo, Richard W.	R	11	Alameda, Contra Costa, San Joaquin, Santa Clara	2495 W. March Lane, #104 Stockton 95207
Radanovich, George P.	R	19	Fresno, Madera, Mariposa, Stanislaus, Tuolumne	2350 W. Shaw, #137 Fresno 93711
Rohrabacher, Dana	R	46	Los Angeles, Orange	101 Main St., #380 Huntington Beach 92648
Roybal-Allard, Lucille	D	34	Los Angeles	255 E. Temple St., #1860 Los Angeles 90012
Royce, Edward R.	R	40	Orange	305 N. Harbor Blvd., #300 Fullerton 92832
Sanchez, Linda T.	D	39	Los Angeles	4007 Paramount Blvd., Suite 106 Lakewood 90712
Sanchez, Loretta	D	47	Orange	12397 Lewis St., #101 Garden Grove 92840
Schiff, Adam B.	D	29	Los Angeles	35 S. Raymond Ave., #205 Pasadena 91105
Sherman, Brad	D	27	Los Angeles	5000 Van Nuys Blvd., Suite 420 Sherman Oaks 91403
Solis, Hilda L.	D	32	Los Angeles	4401 Santa Anita Ave., #211 El Monte 91731
Stark, Fortney "Pete"	D	13	Alameda	39300 Civic Center Drive, #220 Fremont 94538
Tauscher, Ellen O.	D	10	Alameda, Contra Costa, Sacramento, Solano	1801 N. California Blvd., #103 Walnut Creek 94596
Thomas, William M.	R	22	Kern, Los Angeles, San Luis Obispo	4100 Empire Drive, Suite 150 Bakersfield 93309
Thompson, Mike	D	1	Del Norte, Humboldt, Lake, Mendocino, Napa, Sonoma, Yolo	1040 Main St., #101 Napa 94559
Waters, Maxine	D	35	Los Angeles	10124 Broadway, #1 Los Angeles 90003
Watson, Diane	D	33	Los Angeles	4322 Wilshire Blvd., Suite 302 Los Angeles 90010
Waxman, Henry A.	D	30	Los Angeles	8436 W. 3rd St., #600 Los Angeles 90048
Woolsey, Lynn C.	D	6	Marin, Sonoma	1050 Northgate Drive, Suite 140 San Rafael 94903

* During Sessions of Congress, mail for Members of the Senate may be addressed: Senate Office Building, Washington, D.C. 20510, and Members of the House of Representatives: House Office Building, Washington, D.C. 20515.

THE STATE LEGISLATURE

MEMBERS OF THE SENATE

Name	Occupation	Party	Dist.	Counties	District Address
Aanestad, Sam	Oral Surgeon	R	4	Butte, Colusa, Del Norte, Glenn, Nevada, Placer, Shasta, Siskiyou, Sutter, Tehama, Trinity, Yuba	200 Providence Mine Road, Suite 108, Nevada City 95959 Ph: (530) 470-1846
Ackerman, Dick	Attorney	R	33	Orange	17821 East 17th Street, Suite 180, Tustin 92780 Ph: (714) 573-1853
Alarcón, Richard	Full-time Legislator	D	20	Los Angeles	6150 Van Nuys Blvd., Suite 400, Van Nuys 91401 Ph: (818) 901-5588
Alpert, Dede	Full-time Legislator	D	39	San Diego	1557 Columbia St., San Diego 92101 Ph: (619) 645-3090
Ashburn, Roy	County Supervisor	R	18	Inyo, Kern, San Bernardino, Tulare	5001 California Ave., Suite 105 Bakersfield 93309 Ph: (661) 323-0443
Battin, Jim	Businessman	R	37	Riverside	73-710 Fred Waring Drive, Suite 112, Palm Desert 92260 Ph: (760) 568-0408
Bowen, Debra	Public Law Attorney	D	28	Los Angeles	2512 Artesia Blvd., Suite 200, Redondo Beach 90278. Ph: (310) 318-6994
Brulte, James L.	Full-time Legislator	R	31	Riverside, San Bernardino	10681 Foothill Blvd., Suite 325, Rancho Cucamonga 91730. Ph: (909) 466-9096
Burton, John L.	Attorney	D	3	Marin, San Francisco, Sonoma	455 Golden Gate Ave., #14800, San Francisco 94102. Ph: (415) 557-1300
Cedillo, Gilbert	Director, Community Organization	D	22	Los Angeles	617 S. Olive St., Suite 710 Los Angeles 90014 Ph: (213) 612-9566
Chesbro, Wesley	Full-time Legislator	D	2	Humboldt, Lake, Mendocino, Napa, Solano, Sonoma	1040 Main Street, Suite 205, Napa 94559 Ph: (707) 224-1990
Denham, Jeff	Agriculture Business	R	12	Madera, Merced, Monterey, San Benito, Stanislaus	1620 N. Carpenter Road, Suite A-4, Modesto 95351 Ph: (209) 557-6592
Ducheny, Denise Moreno	Attorney	D	40	Imperial, Riverside, San Diego	637 3rd Avenue, Suite C, Chula Vista 91910 Ph: (619) 409-7690
Dunn, Joe	Consumer Attorney	D	34	Orange	12397 Lewis Street, Suite 103, Garden Grove 92840 Ph: (714) 705-1580
Escutia, Martha	Attorney	D	30	Los Angeles	12440 E. Imperial Highway, Suite 125, Norwalk 90650 Ph: (562) 929-6060
Figueroa, Liz	Businesswoman.	D	10	Alameda, Santa Clara	43081 Mission Blvd., Suite 103, Fremont 94539 Ph: (510) 413-5960
Florez, Dean	Investment Banking	D	16	Fresno, Kern, Kings, Tulare	2550 Mariposa Mall, Suite 2016, Fresno 93721 Ph: (559) 264-3070
Hollingsworth, Dennis	Farmer's Representative	R	36	Riverside, San Diego	27555 Ynez Road, Suite 204, Temecula 92591 Ph: (909) 676-1020
Johnson, Ross	Full-time Legislator	R	35	Orange	18552 MacArthur Blvd., Suite 395, Irvine 92612 Ph: (949) 833-0180
Karnette, Betty	Businesswoman/ Teacher	D	27	Los Angeles	3711 Long Beach Blvd., Suite 801, Long Beach 90807. Ph: (562) 997-0794

MEMBERS OF THE SENATE—Continued

Name	Occupation	Party	Dist.	Counties	District Address
Kuehl, Sheila James	Full-time Legislator.....	D	23	Los Angeles, Ventura	10951 West Pico Blvd., #202, Los Angeles 90064 Ph: (310) 441-9084
Machado, Mike	Farmer/ Businessman...	D	5	Sacramento, San Joaquin, Solano, Yolo	1020 N Street, Suite 502, Sacramento 95814 Ph: (916) 323-4306
Margett, Bob	Businessman	R	29	Los Angeles, Orange, San Bernardino.....	23355 E. Golden Springs Drive, Diamond Bar 91765 Ph: (909) 860-6402
McClintock, Tom	Taxpayer Advocate	R	19	Los Angeles, Santa Barbara, Ventura...	223 E. Thousand Oaks Blvd., Suite 326, Thousand Oaks 91360. Ph: (805) 494-8808
McPherson, Bruce ..	Businessman	R	15	Monterey, San Luis Obispo, Santa Clara, Santa Cruz	701 Ocean St., Room 318A, Santa Cruz 95060 Ph: (831) 425-0401; 25 San Juan Grade Road, Suite 150, Salinas 93906 Ph: (831) 443-3402
Morrow, Bill	Attorney	R	38	Orange, San Diego ..	27126A Paseo Espada, Suite 1621, San Juan Capistrano 92675 Ph: (949) 489-9838; 2755 Jefferson Street, Suite 101, Carlsbad 92008 Ph: (760) 434-7930
Murray, Kevin	Full-time Legislator.....	D	26	Los Angeles.....	600 Corporate Pt., Suite 1020, Culver City 90230 Ph: (310) 641-4391
Oller, Thomas "Rico"	Business Owner	R	1	Alpine, Amador, Calaveras, El Dorado, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, Sierra	4230 Douglas Blvd., Suite 300, Granite Bay 95746 Ph: (916) 969-8232; 33C Broadway Jackson 95642 Ph: (209) 223-9140; 1020 N Street, Room 568 Sacramento 95814 Ph: (916) 327-9034
Ortiz, Deborah	Full-time Legislator.....	D	6	Sacramento.....	1020 N St., Suite 576, Sacramento 95814 Ph: (916) 324-4937
Perata, Don	Teacher.....	D	9	Alameda, Contra Costa.....	1515 Clay St., Suite 2202 Oakland 94612 Ph: (510) 286-1333
Poochigian, Charles	Attorney	R	14	Fresno, Madera, Mariposa, San Joaquin, Stanislaus, Tuolumne	4974 E. Clinton Way, Suite 100, Fresno 93727 Ph: (559) 253-7122
Romero, Gloria	Professor	D	24	Los Angeles.....	149 South Mednik Avenue, Suite 202, Los Angeles 90022 Ph: (323) 881-0100
Scott, Jack	Legislator/ Professor.....	D	21	Los Angeles.....	215 N. Marengo Avenue, Suite 185, Pasadena 91101 Ph: (626) 683-0282
Sher, Byron	Law Professor ...	D	11	San Mateo, Santa Clara, Santa Cruz	664 Gilman Street, Palo Alto 94301 Ph: (650) 688-6374; 100 Paseo de San Antonio, Suite 206, San Jose 95113 Ph: (408) 277-9460

MEMBERS OF THE SENATE—Continued

Name	Occupation	Party	Dist.	Counties	District Address
Soto, Nell	Full-time Legislator	D	32	Los Angeles, San Bernardino	822 N. Euclid Avenue, Suite A, Ontario 91762 Ph: (909) 984-7741; 357 West 2nd Street, Suite 1, San Bernardino 92401 Ph: (909) 381-3832
Speier, Jackie	Attorney/ Legislator	D	8	San Francisco, San Mateo	400 South El Camino Real, Suite 630, San Mateo 94402. Ph: (650) 340-8840; 455 Golden Gate Avenue, Room 14200, San Francisco 94102 Ph: (415) 557-7857
Torlakson, Tom	Educator	D	7	Contra Costa	2801 Concord Blvd., Concord 94519 Ph: (925) 602-6593; 420 W. 3rd Street, Antioch 94509 Ph: (925) 754-1461
Vasconcellos, John	Full-time Legislator	D	13	Santa Clara	100 Paseo de San Antonio, Suite 209, San Jose 95113 Ph: (408) 286-8318
Vincent, Edward	Legislator	D	25	Los Angeles	1 Manchester Boulevard, Suite 600, Inglewood 90301. Ph: (310) 412-0393
Vacant		–	17	Los Angeles, San Bernardino, Ventura	

OFFICERS AND ATTACHÉS OF THE SENATE

Title	Name	Capitol Office
President of Senate	Cruz Bustamante	1114 State Capitol
President pro Tempore	John Burton	205 State Capitol
Secretary of Senate	Gregory Schmidt	3044 State Capitol
Sergeant at Arms	Tony Beard	3030 State Capitol
Chaplain	Rev. Deacon Walter J. Little	3044 State Capitol
Chief Assistant Secretary	John W. Rovane	3044 State Capitol
Minute Clerk	Walter J. Little	3044 State Capitol
History Clerk	David H. Kneale	3044 State Capitol
Assistant Secretary	Stephen W. Hummelt	3044 State Capitol
File Clerk	Marlissa Hernandez	3044 State Capitol
Engrossing and Enrolling Clerk	Marie Harlan	B30 State Capitol

MEMBERS OF THE ASSEMBLY

Name	Occupation	Party	Dist.	Capitol Office	Counties	District Office Mailing Address
Aghazarian, Greg	Small Businessman.....	R	26	2130	San Joaquin, Stanislaus	4557 Quail Lakes Drive, Suite C3, Stockton 95207
Bates, Patricia C.	Legislator	R	73	4116	Orange, San Diego..	30012 Ivy Glenn Dr., #120, Laguna Nigel 92677
Benoit, John J.	Law Enforcement	R	64	4144	Riverside	1223 University Ave., Suite 230, Riverside 92507
Berg, Patty.....	Administrator/ Legislator.....	D	1	2137	Del Norte, Humboldt, Lake, Mendocino, Sonoma, Trinity....	235 Fourth Street, Suite C, Eureka 95501
Bermudez, Rudy	Law Enforcement	D	56	5135	Los Angeles, Orange	12501 East Imperial Highway, Suite 210, Norwalk 90650
Bogh, Russ	Businessman/ Legislator.....	R	65	4098	Riverside, San Bernardino.....	34932 Yucaipa Blvd., Yucaipa 92399
Calderon, Ronald S.	Legislator/ Real Estate.....	D	58	2179	Los Angeles.....	400 N. Montebello Blvd., Suite 100, Montebello 90640
Campbell, John ...	Business Owner/ CPA	R	70	4102	Orange.....	18952 MacArthur Blvd., Suite 220, Irvine 92612
Canciamilla, Joe .	Full-time Legislator.....	D	11	2141	Contra Costa.....	420 W. Third Street, Antioch 94531
Chan, Wilma	Legislator.....	D	16	2117	Alameda.....	1515 Clay Street, Suite 2204, Oakland 94612
Chavez, Edward ..	Full-time Legislator.....	D	57	2188	Los Angeles.....	13181 N. Crossroads Parkway, Suite 160, City of Industry 91746
Chu, Judy	Full-time Legislator.....	D	49	2114	Los Angeles	1255 Corporate Center Drive, Suite PH-9, Monterey Park 91754
Cogdill, Dave	Small Business Owner.....	R	25	4117	Calaveras, Madera, Mariposa, Mono, Stanislaus, Tuolumne	1912 Standiford Avenue, Suite 4, Modesto 95350
Cohn, Rebecca	Management Consultant	D	24	6005	Santa Clara	901 Campisi Way, Suite 300, Campbell 95008
Corbett, Ellen M.	Full-time Legislator.....	D	18	4126	Alameda.....	317 Juana Ave., San Leandro 94577
Correa, Lou	Legislator	D	69	6025	Orange.....	2323 N. Broadway, Suite 225, Santa Ana 92706
Cox, Dave	Businessman/ Legislator.....	R	5	5160	Placer, Sacramento..	4811 Chippendale Drive, Suite 501, Sacramento 95841
Daucher, Lynn	Legislator	R	72	2158	Orange.....	210 W. Birch Street, Suite 202, Brea 92821
Diaz, Manny	Full-time Legislator.....	D	23	2136	Santa Clara.....	100 Paseo de San Antonio, Suite 319, San Jose 95113
Dutra, John	Businessman/ Legislator.....	D	20	3091	Alameda, Santa Clara	39510 Paseo Padre Parkway, Suite 280, Fremont 94538
Dutton, Robert D.	Real Estate Investment and Management.....	R	63	3149	Riverside, San Bernardino.....	8577 Haven Avenue, Suite 210, Rancho Cucamonga 91730
Dymally, Mervyn M.....	University Professor.....	D	52	3132	Los Angeles.....	322 W. Compton Blvd., Suite 100, Compton 90220
Firebaugh, Marco A.....	Legislator	D	50	3152	Los Angeles.....	8724 Garfield Avenue, Suite 104, South Gate 90280
Frommer, Dario ..	Legislator	D	43	3160	Los Angeles.....	620 N. Brand Blvd., Suite 403, Glendale 91205-1036

MEMBERS OF THE ASSEMBLY—Continued

Name	Occupation	Party	Dist.	Capitol Office	Counties	District Office Mailing Address
Garcia, Bonnie	Businesswoman...	R	80	5126	Imperial, Riverside..	68-700 Avenida Lalo Guerrero, Suite B, Cathedral City 92234; 1430 Broadway, Suite 8, El Centro 92243
Goldberg, Jackie .	Teacher/ Legislator.....	D	45	2003	Los Angeles.....	106 North Avenue 56, Los Angeles 90042
Hancock, Loni	Full-time Legislator.....	D	14	4139	Alameda, Contra Costa.....	712 El Cerrito Plaza, El Cerrito 94530
Harman, Tom	Attorney	R	67	5158	Orange.....	17011 Beach Blvd., Suite 570, Huntington Beach 92647
Haynes, Ray	Attorney	R	66	4158	Riverside, San Diego	27555 Ynez Road, Suite 205, Temecula 92591
Horton, Jerome ...	Accountant/ Business Tax Specialist	D	51	2163	Los Angeles.....	One Manchester Blvd., Suite 601, Inglewood 90301
Horton, Shirley....	Businesswoman...	R	78	2174	San Diego.....	7144 Broadway, Lemon Grove 91945
Houston, Guy S...	Mortgage Broker/ Real Estate.....	R	15	4208	Alameda, Contra Costa, Sacramento, San Joaquin	734 Third Street, Brentwood 94513; 1635 Chestnut Street, Suite A, Livermore 94551; 1666 North Main St., Room 353, Walnut Creek 94596
Jackson, Hannah-Beth ...	Attorney/ Legislator.....	D	35	4140	Santa Barbara, Ventura	101 W. Anapamu St., Suite A, Santa Barbara 93101; 701 E. Santa Clara Street , Suite 25, Ventura 93001
Keene, Rick	Attorney	R	3	6027	Butte, Lassen, Nevada, Placer, Plumas, Sierra, Yuba	1550 Humboldt Road, Suite 4, Chico 95928
Kehoe, Christine	Legislator	D	76	5150	San Diego.....	1010 University Ave., Suite C-207, San Diego 92103
Koretz, Paul	Legislator	D	42	2176	Los Angeles.....	12069 Ventura Place, Suite H, Studio City 91604; 9200 Sunset Boulevard, PH 15, West Hollywood 90069
La Malfa, Doug...	Farmer.....	R	2	4177	Butte, Colusa, Glenn, Modoc, Shasta, Siskiyou, Sutter, Tehama, Yolo	1527 Starr Drive, Suite U, Yuba City 95993
La Suer, Jay.....	Legislator	R	77	2016	San Diego.....	5360 Jackson Drive, Suite 120, La Mesa 91942
Laird, John	Full-time Legislator.....	D	27	2196	Monterey, Santa Clara, Santa Cruz.....	99 Pacific Street, Suite 555D, Monterey 93940; 701 Ocean Street, Room 318B, Santa Cruz 95060
Leno, Mark.....	Business Owner ..	D	13	3146	San Francisco	455 Golden Gate Ave., Suite 14300, San Francisco 94102
Leslie, Tim	Legislator	R	4	4164	Alpine, El Dorado, Placer, Sacramento	3300 Douglas Blvd., Suite 430, Roseville 95661
Levine, Lloyd E...	Full-time Legislator.....	D	40	6011	Los Angeles.....	6150 Van Nuys Blvd., Suite 300, Van Nuys 91401

MEMBERS OF THE ASSEMBLY—Continued

Name	Occupation	Party	Dist.	Capitol Office	Counties	District Office Mailing Address
Lieber, Sally J.	Full-time Legislator.....	D	22	4162	Santa Clara	100 Paseo de San Antonio, Suite 300, San Jose 95113
Liu, Carol	Educator	D	44	4112	Los Angeles.....	215 N. Marengo Ave., Suite 115, Pasadena 91101
Longville, John ...	Full-time Legislator.....	D	62	3123	San Bernardino.....	201 North E Street, Suite 205, San Bernardino 92401
Lowenthal, Alan	Legislator	D	54	4146	Los Angeles.....	115 Pine Ave., Suite 430, Long Beach 90802
Maddox, Ken	Peace Officer/ Legislator.....	R	68	4167	Orange.....	1503 S. Coast Drive, Suite 205, Costa Mesa 92626
Maldonado, Abel	Legislator	R	33	4015	San Luis Obispo, Santa Barbara	1302 Marsh Street, San Luis Obispo 93401
Matthews, Barbara	Legislator	D	17	5155	Merced, San Joaquin, Stanislaus	806 W. 18th Street, Merced 95340; 31 East Channel Street, Suite 306, Stockton 95202
Maze, Bill.....	Building Contractor/ Farmer	R	34	2002	Inyo, Kern, San Bernardino, Tulare	5959 S. Mooney, Visalia 93277; 1775 Highway 58, Mojave 93501
McCarthy, Kevin	Small Business Owner.....	R	32	3104	Kern, San Bernardino.....	4900 California Avenue, Suite 140A, Bakersfield 93309
McLeod, Gloria Negrete	Legislator	D	61	5016	Los Angeles, San Bernardino.....	4959 Palo Verde Street, Suite 100B, Montclair 91763
Montanez, Cindy	Full-time Legislator.....	D	39	3013	Los Angeles.....	11541 Laurel Canyon Blvd., Suite C, Mission Hills 91345
Mountjoy, Dennis	Small Businessman.....	R	59	3141	Los Angeles, San Bernardino.....	135 W. Lemon Avenue, Suite A, Monrovia 91016; 14955 Dale Evans Parkway, Room 111, Apple Valley 92307
Mullin, Gene	Educator	D	19	2170	San Mateo	1528 S. El Camino Real, Suite 302, San Mateo 94402
Nakanishi, Alan...	Physician	R	10	5175	Amador, El Dorado, Sacramento, San Joaquin	218 W. Pine Street, Lodi 95240
Nakano, George ..	Legislator	D	53	3120	Los Angeles.....	1217 El Prado Avenue, Torrance 90501
Nation, Joe	Legislator	D	6	5144	Marin, Sonoma.....	3501 Civic Center Drive, Room 412, San Rafael 94903; 50 D Street, Suite 305, Santa Rosa 95404
Nuñez, Fabian	Speaker/Full-time Legislator.....	D	46	219	Los Angeles.....	320 W. 4th Street, Room 1050, Los Angeles 90013
Oropeza, Jenny ...	Full-time Legislator.....	D	55	2148	Los Angeles.....	One Civic Plaza, Suite 460, Carson 90745
Pacheco, Robert ..	Attorney/ Businessman.....	R	60	5164	Los Angeles, Orange, San Bernardino.....	17800 Castleton St., Suite 125, City of Industry 91748
Parra, Nicole.....	Full-time Legislator.....	D	30	2160	Fresno, Kern, Kings, Tulare	601 24th Street, Suite A, Bakersfield 93301

MEMBERS OF THE ASSEMBLY—Continued

Name	Occupation	Party	Dist.	Capitol Office	Counties	District Office Mailing Address
Pavley, Fran	Teacher.....	D	41	3126	Los Angeles, Ventura	6355 Topanga Canyon Blvd., Suite 205, Woodland Hills 91367
Plescia, George A.	Full-time Legislator.....	R	75	4009	San Diego.....	9909 Mira Mesa Blvd., Suite 130, San Diego 92131
Reyes, Sarah	Legislator	D	31	5136	Fresno, Tulare	2550 Mariposa Mall, Suite 5031, Fresno 93721
Richman, Keith ...	Physician	R	38	5128	Los Angeles, Ventura	10727 White Oak Avenue, Suite 124, Granada Hills 91344
Ridley-Thomas, Mark	Civil Rights Advocate/ Educator	D	48	4005	Los Angeles.....	700 State Drive, Los Angeles 90037
Runner, Sharon ...	Businesswoman...	R	36	6031	Los Angeles, San Bernardino.....	747 W. Lancaster Blvd, Lancaster 93534; 14343 Civic Drive, Victorville 92392
Salinas, Simón	Teacher/Professor	D	28	2175	Monterey, San Benito, Santa Clara, Santa Cruz .	365 Fouth Street, Hollister 95023; 100 West Alisal Street, Suite 134, Salinas 93901; 231 Union Street, Watsonville 95077
Samuelian, Steve N.	Full-time Legislator.....	R	29	4153	Fresno, Madera, Tulare	83 E. Shaw Ave., Suite 202, Fresno 93710
Simitian, Joe	Full-time Legislator.....	D	21	5119	San Mateo, Santa Clara	160 Town & Country Village, Palo Alto 94301
Spitzer, Todd	Attorney	R	71	2111	Orange, Riverside....	1940 N. Tustin St, Suite 102, Orange 92865
Steinberg, Darrell	Full-time Legislator.....	D	9	6026	Sacramento.....	915 L St., Suite 110, Sacramento 95814
Strickland, Tony ..	Full-time Legislator.....	R	37	3098	Los Angeles, Ventura	2659 Townsgate Rd., Suite 236, Westlake Village 91361
Vargas, Juan	Legislator/ Attorney.....	D	79	2013	San Diego.....	678 Third Avenue, Suite 105, Chula Vista 91910
Wesson, Herb	Legislator	D	47	319	Los Angeles.....	5100 W. Goldleaf Circle, Suite 230, Los Angeles 90056
Wiggins, Patricia	Legislator	D	7	4016	Napa, Solano, Sonoma.....	50 D Street, Suite 301, Santa Rosa 95404; 640 Tuolumne Street, Suite B, Vallejo 94590
Wolk, Lois	Teacher.....	D	8	6012	Solano, Yolo	555 Mason Street, Suite 275, Vacaville 95688
Wyland, Mark	Legislator	R	74	4130	San Diego.....	221 E. Main Street, Suite 205, Vista 92084
Yee, Leland Y.	Speaker pro Tempore/Child Psychologist	D	12	3173	San Francisco, San Mateo	455 Golden Gate Ave., Suite 14600, San Francisco 94102

OFFICERS OF THE ASSEMBLY

Name	Title	Mailing Address
Nuñez, Fabian	Speaker.....	320 W. 4th Street, Room 1050, Los Angeles 90013
Yee, Leland	Speaker pro Tempore	455 Golden Gate Avenue, Suite 14600, San Francisco 94102
Frommer, Dario	Majority Floor Leader....	620 N. Brand Blvd., Suite 403, Glendale 91205-1036
McCarthy, Kevin.....	Minority Floor Leader....	4900 California Avenue, Suite 140A, Bakersfield 93309
Wilson, E. Dotson	Chief Clerk.....	State Capitol, Room 3196, Sacramento 95814
Pane, Ronald	Sergeant-at-Arms	State Capitol, Room 3171, Sacramento 95814

STATE JUDICIAL DEPARTMENT

SUPREME COURT JUSTICES AND OFFICERS

Terms of Court

Sessions of Court are held at San Francisco, Los Angeles and Sacramento

JUSTICES

Hon. Ronald M. George ..... Chief Justice
Hon. Carlos R. Moreno ..... Associate Justice
Hon. Kathryn M. Werdegar ..... Associate Justice
Hon. Joyce L. Kennard ..... Associate Justice
Hon. Ming W. Chin ..... Associate Justice
Hon. Marvin R. Baxter ..... Associate Justice
Hon. Janice R. Brown ..... Associate Justice
Frederick K. Ohlrich ..... Clerk/Administrator

COURTS OF APPEAL

FIRST APPELLATE DISTRICT

DIVISION ONE

Hon. James J. Marchiano ..... Presiding Justice
Hon. Douglas E. Swager ..... Associate Justice
Hon. William D. Stein ..... Associate Justice
Hon. Sandra L. Margulies ..... Associate Justice

DIVISION TWO

Hon. J. Anthony Kline ..... Presiding Justice
Hon. James R. Lambden ..... Associate Justice
Hon. Paul R. Haerle ..... Associate Justice
Hon. Ignazio J. Ruvolo ..... Associate Justice

DIVISION THREE

Hon. William R. McGuiness ..... Admin. Presiding Justice
Hon. Joanne C. Parrilli ..... Associate Justice
Hon. Stuart R. Pollak ..... Associate Justice
Hon. Carol A. Corrigan ..... Associate Justice

DIVISION FOUR

Hon. Laurence D. Kay ..... Presiding Justice
Hon. Timothy A. Reardon ..... Associate Justice
Hon. Patricia K. Sepulveda ..... Associate Justice
Hon. Maria P. Rivera ..... Associate Justice

DIVISION FIVE

Hon. Barbara J.R. Jones ..... Presiding Justice
Hon. Lawrence T. Stevens ..... Associate Justice
Hon. Mark B. Simons ..... Associate Justice
Hon. Linda M. Gemello ..... Associate Justice
Diana Herbert ..... Clerk/Administrator

350 McAllister Street, San Francisco 94102

SECOND APPELLATE DISTRICT

DIVISION ONE

Hon. Vaino Spencer ..... Presiding Justice
Hon. Miriam Vogel ..... Associate Justice
Hon. Robert M. Mallano ..... Associate Justice
Hon. Reuben A. Ortega ..... Associate Justice

300 So. Spring St., North Tower, 2nd Floor, Los Angeles 90013

DIVISION TWO

Hon. Roger W. Boren ..... Presiding Justice
Hon. Michael G. Nott ..... Associate Justice
Hon. Judith M. Ashmann-Gerst ..... Associate Justice
Hon. Kathryn Doi Todd ..... Associate Justice

300 So. Spring St., North Tower, 2nd Floor, Los Angeles 90013

DIVISION THREE

Hon. Joan D. Klein ..... Presiding Justice
Hon. Richard D. Aldrich ..... Associate Justice
Hon. Patti S. Kitching ..... Associate Justice
Hon. H. Walter Croskey ..... Associate Justice

300 So. Spring St., North Tower, 2nd Floor, Los Angeles 90013

DIVISION FOUR

Vacant ..... Presiding Justice
Hon. Norman L. Epstein ..... Associate Justice
Hon. J. Gary Hastings ..... Associate Justice
Hon. Daniel A. Curry ..... Associate Justice

300 So. Spring St., North Tower, 2nd Floor, Los Angeles 90013

DIVISION FIVE

Hon. Paul Turner ..... Presiding Justice
Hon. Orville A. Armstrong ..... Associate Justice
Hon. Margaret M. Grignon ..... Associate Justice
Hon. Richard M. Mosk ..... Associate Justice

300 So. Spring St., North Tower, 2nd Floor, Los Angeles 90013

DIVISION SIX

Hon. Arthur Gilbert ..... Presiding Justice
Hon. Steven Z. Perren ..... Associate Justice
Hon. Kenneth R. Yegan ..... Associate Justice
Hon. Paul H. Coffee ..... Associate Justice

200 East Santa Clara St., Ventura 93001

DIVISION SEVEN

Hon. Dennis M. Perluss ..... Presiding Justice
Hon. Earl Johnson, Jr. ..... Associate Justice
Hon. Fred Woods ..... Associate Justice
Hon. Laurie D. Zelon ..... Associate Justice

300 So. Spring St., North Tower, 2nd Floor, Los Angeles 90013

DIVISION EIGHT

Hon. Candace D. Cooper ..... Presiding Justice
Hon. Paul Boland ..... Associate Justice
Hon. Laurence D. Rubin ..... Associate Justice
Hon. Madeleine I. Flier ..... Associate Justice
Joseph Lane ..... Clerk/Administrator

300 So. Spring St., North Tower, 2nd Floor, Los Angeles 90013

THIRD APPELLATE DISTRICT

Hon. Arthur G. Scotland ..... Admin. Presiding Justice
Hon. Coleman A. Blease ..... Associate Justice
Hon. M. Kathleen Butz ..... Associate Justice
Hon. Richard M. Sims III ..... Associate Justice
Hon. Rodney Davis ..... Associate Justice
Hon. George W. Nicholson ..... Associate Justice
Hon. Vance W. Raye ..... Associate Justice
Hon. Fred K. Morrison ..... Associate Justice
Vacant ..... Associate Justice
Hon. Harry E. Hull Jr. ..... Associate Justice
Hon. Ronald B. Robie ..... Associate Justice
Deena Fawcett ..... Clerk/Administrator

914 Capitol Mall Court, Sacramento 95814

FOURTH APPELLATE DISTRICT

DIVISION ONE

Hon. Judith McConnell ..... Admin. Presiding Justice
Hon. Judith L. Haller ..... Associate Justice
Hon. Joan K. Irion ..... Associate Justice
Hon. Alex C. McDonald ..... Associate Justice
Hon. Patricia D. Benke ..... Associate Justice
Hon. Richard D. Huffman ..... Associate Justice
Hon. James A. McIntyre ..... Associate Justice
Hon. Gilbert Nares ..... Associate Justice
Hon. Terry B. O'Rourke ..... Associate Justice
Hon. Cynthia G. Aaron ..... Associate Justice
Stephen M. Kelly ..... Administrative Clerk/Administrator

750 B St., Suite 300, San Diego 92101

DIVISION TWO

Hon. Manuel A. Ramirez ..... Presiding Justice
Hon. Barton C. Gaut ..... Senior Justice
Hon. Thomas E. Hollenhorst ..... Associate Justice
Hon. Betty Ann Richli ..... Associate Justice
Hon. Art W. McKinster ..... Associate Justice
Hon. James D. Ward ..... Associate Justice
Hon. Jeffrey King ..... Associate Justice

3389 12th St., Riverside 92501

DIVISION THREE

Hon. David G. Sills ..... Presiding Justice
Hon. Richard D. Fybel ..... Associate Justice
Hon. Kathleen E. O'Leary ..... Associate Justice
Hon. Eileen C. Moore ..... Associate Justice
Hon. William F. Rylaarsdam ..... Associate Justice
Hon. William W. Bedsworth ..... Associate Justice
Hon. Richard M. Aronson ..... Associate Justice
Hon. Raymond J. Ikola ..... Associate Justice

925 No. Spurgeon St., Santa Ana 92701

FIFTH APPELLATE DISTRICT

Hon. James A. Ardaiz ..... Admin. Presiding Justice
Hon. Herbert I. Levy ..... Associate Justice
Hon. Dennis A. Cornell ..... Associate Justice
Hon. Nikolas J. Dibiaso ..... Associate Justice
Hon. Steven M. Vartabedian ..... Associate Justice
Hon. Betty L. Dawson ..... Associate Justice
Hon. Thomas A. Harris ..... Associate Justice
Hon. Timothy S. Buckley ..... Associate Justice
Hon. Rebecca A. Wiseman ..... Associate Justice
Hon. Gene M. Gomes ..... Associate Justice
Kay Fravenholtz ..... Clerk/Administrator

2525 Capitol Street, Fresno 93721

SIXTH APPELLATE DISTRICT

Hon. Conrad L. Rushing ..... Admin. Presiding Justice
Hon. Patricia Bamattre-Manoukian ..... Associate Justice
Hon. Franklin D. Elia ..... Associate Justice
Hon. Eugene M. Premo ..... Associate Justice
Hon. William M. Wunderlich ..... Associate Justice
Hon. Nathan D. Mihara ..... Associate Justice
Hon. Richard J. McAdams ..... Associate Justice
Michael J. Yerly ..... Clerk/Administrator

333 West Santa Clara Street, Suite 1060, San Jose 95113

PUBLIC UTILITIES COMMISSION

Michael R. Peevey ..... President
Loretta Lynch ..... Commissioner
Carl Wood ..... Commissioner
Susan Kennedy ..... Commissioner
Geoffrey Brown ..... Commissioner
William Ahern ..... Executive Director

WORKERS' COMPENSATION APPEALS BOARD

Joseph M. Miller ..... Chairperson
Frank M. Brass ..... Member
James C. Cuneo ..... Member
William K. O'Brien ..... Member
Janis Murray ..... Member
Ronnie Caplane ..... Member
Vacant ..... Member

TABLE OF LAWS ENACTED

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE

2004

2003–04 REGULAR SESSION
2003–04 THIRD EXTRAORDINARY SESSION
2003–04 FOURTH EXTRAORDINARY SESSION
2003–04 FIFTH EXTRAORDINARY SESSION

TABLE OF LAWS ENACTED

2004

2003–04 Regular Session

Ch. No.	A.B. No.	S.B. No.	Author
1	2	—	Bogh (Coauthors: Assembly Members Bermudez, Cogdill, Koretz, and Spitzer)
2	685	—	Leno
3	283	—	Campbell
4	652	—	Leno
5	1145	—	Shirley Horton (Coauthors: Assembly Members Benoit, Cox, Daucher, Dutton, Koretz, Longville, Maze, Mullin, Pacheco, Runner, and Strickland) (Coauthors: Senators Figueroa, Morrow, Oller, and Ortiz)
6	1179	—	Parra (Coauthor: Assembly Member Maze) (Coauthors: Senators Ashburn and Chesbro)
7	1182	—	Ridley-Thomas
8	1209	—	Nakano
9	1501	—	Levine
10	1192	—	Dutra
11	419	—	Committee on Public Employees, Retirement and Social Security (Negrete McLeod (Chair), Levine (Vice Chair), Correa, Laird, and Nakanishi)
12	—	98	Alpert
13	1740	—	Committee on Revenue and Taxation (Chavez (Chair), Laird, Leno, and Simitian)
14	371	—	La Suer
15	—	976	Ducheny
16	—	1086	Sher
17	971	—	Correa
18	1087	—	Frommer
19	1108	—	Bermudez
20	44	—	Pacheco
21	97	—	Nation, Parra, and Wyland (Principal coauthor: Senator Denham) (Coauthors: Assembly Members Benoit, Berg, and Plescia)
22	1153	—	Bermudez
23	—	1041	Committee on Budget and Fiscal Review
24	—	1057	Committee on Budget and Fiscal Review
25	1498	—	Wiggins
26	806	—	Wiggins (Coauthors: Assembly Members Negrete McLeod, Samuelian, and Wolk) (Coauthor: Senator Alpert)
27	1195	—	Cohn and Mullin
28	—	31	Perata (Principal coauthor: Assembly Member Correa)
29	—	1091	Committee on Local Government (Senators Torlakson (Chair), Ackerman, Hollingsworth, Machado, Margett, Perata, and Soto)
30	1306	—	Leno
31	1786	—	Cogdill (Coauthor: Senator Oller)
32	—	279	Chesbro (Principal coauthor: Assembly Member La Malfa) (Coauthor: Senator Denham) (Coauthors: Assembly Members Berg, Dutton, Hancock, Koretz, Maze, Reyes, and Strickland)
33	1467	—	Negrete McLeod (Coauthor: Senator Cedillo)
34	—	899	Poochigian (Coauthors: Senators Machado, Florez, Aanestad, Battin, Karnette, Margett, McPherson, Perata, Scott, and Speier) (Coauthors: Assembly Members Parra, Aghazarian, Bogh, Cohn, Dutra, Dutton, Firebaugh, Frommer, Harman, Jerome Horton, Keene, Leno, Leslie, Liu, Maddox, Matthews, McCarthy, Montanez, Nakanishi, Nation, Nunez, Reyes, Salinas, Samuelian, Simitian, Strickland, Wolk, and Wyland)
35	—	678	Ortiz
36	691	—	Daucher (Coauthors: Assembly Members Chu and Lieber)
37	1457	—	Committee on Budget (Steinberg (Chair), Keene (Vice Chair), Bates, Benoit, Bermudez, Canciamilla, Chan, Cogdill, Daucher, Diaz, Dutra, Dymally, Goldberg, Hancock, Harman, Haynes, Jackson, Laird, Levine, Lieber, Liu, Maze, Nakano, Pacheco, Pavley, Plescia, Reyes, Runner, Simitian, and Wolk)
38	—	1051	Committee on Local Government (Senators Torlakson (Chair), Ackerman, Hollingsworth, Machado, Margett, Perata, and Soto)
39	—	753	Alpert
40	701	—	Jerome Horton
41	1454	—	Canciamilla
42	1320	—	Dutra (Coauthor: Senator Torlakson)
43	—	1842	Chesbro
44	—	23	Sher and Burton (Coauthors: Assembly Members Hancock, Jackson, Hancock, and Koretz)
45	782	—	Kehoe (Principal coauthor: Senator Burton) (Coauthors: Assembly Members Corbett and Pacheco) (Coauthor: Senator Morrow)
46	—	772	Bowen
47	700	—	Diaz
48	2481	—	Nunez
49	—	1225	Morrow
50	—	1408	Poochigian
51	—	1707	Aanestad
52	2756	—	Daucher (Coauthor: Assembly Member Samuelian) (Coauthor: Senator Vincent)
53	—	1190	Chesbro (Principal coauthor: Assembly Member Wiggins)
54	—	1021	Poochigian
55	—	1658	Karnette
56	162	—	Cohn
57	2301	—	Maze
58	2630	—	Hancock
59	2182	—	Koretz
60	2243	—	Vargas
61	2829	—	Bogh
62	—	1172	Ackerman
63	—	1350	Morrow
64	254	—	Montanez (Coauthors: Assembly Members Bates, Diaz, Dymally, Lieber, and Lowenthal) (Coauthors: Senators Florez, Kuehl, Margett, and Romero)
65	883	—	Runner
66	920	—	Nakano
67	1851	—	Harman

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
68	—	1364	Chesbro
69	—	626	Committee on Public Employment and Retirement (Senators Soto (Chair), Karnette, and Scott)
70	—	1911	Committee on Agriculture and Water Resources (Senators Machado (Chair), Alpert, Ducheny, Florez, Hollingsworth, Kuehl, and Torlakson)
71	—	1169	Murray
72	1887	—	Nakanishi
73	2126	—	Dutton
74	1901	—	Ridley-Thomas (Coauthor: Assembly Member Jerome Horton)
75	1883	—	Harman
76	—	115	Torlakson
77	1264	—	Benoit
78	2049	—	Nakanishi
79	—	1143	Morrow
80	2164	—	Plescia
81	2362	—	Daucher
82	2491	—	Jerome Horton
83	2649	—	Salinas
84	901	—	Jackson (Principal coauthor: Senator Sher)
85	2904	—	Benoit
86	—	1688	Ashburn (Principal coauthor: Assembly Member Maze) (Coauthors: Senators Battin, Denham, Ducheny, Kuehl, Morrow, and Oller) (Coauthors: Assembly Members Bates, Benoit, Bermudez, Chavez, Cogdill, Cox, Daucher, Dutton, Garcia, Harman, Shirley Horton, Houston, La Malfa, Maddox, Mountjoy, Nakanishi, Pacheco, Samuelian, Spitzer, Strickland, and Wyland)
87	—	1156	Alarcon (Coauthors: Senators Chesbro and Romero) (Coauthors: Assembly Members Chu and Ridley-Thomas)
88	932	—	Koretz (Principal coauthor: Assembly Member Correa) (Coauthors: Assembly Members Aghazarian, Benoit, Corbett, Shirley Horton, Pavley, Vargas, and Wyland)
89	430	—	Dutra
90	1924	—	Bogh (Principal coauthor: Senator Battin)
91	687	—	Nunez and McCarthy (Principal coauthor: Senator Burton)
92	1840	—	Frommer (Principal coauthor: Senator Scott) (Coauthor: Assembly Member Richman)
93	1985	—	Wolk
94	2337	—	Corbett
95	2490	—	Maddox
96	—	1266	Torlakson (Coauthor: Assembly Member Maze)
97	—	1514	Poochigian
98	2091	—	Longville
99	2276	—	Dymally
100	2919	—	Ridley-Thomas
101	—	1465	Kuehl
102	—	1284	Morrow (Coauthors: Senators Aanestad, Denham, and Oller) (Coauthors: Assembly Members Bogh, Cogdill, Maze, Mountjoy, and Spitzer)
103	—	1413	Brulte and Scott
104	—	761	McPherson
105	987	—	Keene
106	2171	—	Benoit (Coauthor: Assembly Member Dutra)
107	—	1784	Karnette
108	—	1136	Chesbro (Coauthor: Assembly Member Berg)
109	2518	—	Keene
110	—	1328	Torlakson
111	2470	—	Kehoe
112	—	1766	McPherson
113	—	1208	Vincent
114	—	1770	Committee on Local Government (Senators Torlakson (Chair), Machado, Perata, and Soto)
115	1920	—	La Malfa (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Chavez, Cogdill, Cox, Daucher, Garcia, Haynes, Jerome Horton, Kehoe, La Suer, Maze, Pacheco, Samuelian, and Strickland)
116	141	—	Cohn
117	—	1485	Burton
118	—	1165	Committee on Local Government (Senators Torlakson (Chair), Ackerman, Hollingsworth, Machado, Margett, Perata, and Soto)
119	—	1407	Kuehl
120	—	382	Oller (Coauthors: Senators Aanestad, Battin, Denham, Hollingsworth, Johnson, and Morrow) (Coauthors: Assembly Members Aghazarian, Bates, Cogdill, Cox, Shirley Horton, Maze, and Runner)
121	2352	—	Jackson
122	—	1288	Karnette
123	—	1872	Denham
124	891	—	Runner
125	1618	—	Firebaugh and Calderon (Principal coauthor: Senator Escutia) (Coauthor: Assembly Member Bermudez)
126	1929	—	Samuelian (Principal coauthor: Assembly Member Wiggins)
127	1937	—	Corbett
128	2492	—	La Suer
129	2550	—	Steinberg
130	2566	—	Nakano
131	2671	—	Pacheco
132	3099	—	Committee on Elections, Redistricting and Constitutional Amendments (Longville (Chair), Jerome Horton, Laird, Leno, and Levine)
133	1939	—	Cox (Coauthors: Assembly Members Bates, Chavez, Dutra, Garcia, Harman, La Malfa, Leslie, Longville, Maddox, Mountjoy, Pacheco, Plescia, Samuelian, Strickland, and Wyland) (Coauthors: Senators Alpert, Ashburn, Knight, Morrow, and Ortiz)
134	2026	—	Hancock (Coauthors: Assembly Members Leslie and Nation) (Coauthors: Senators Perata and Torlakson)
135	1907	—	Pacheco
136	1848	—	Harman
137	1802	—	Bogh (Principal coauthor: Senator Battin) (Coauthor: Assembly Member Cogdill)

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
138	2269	—	Committee on Veterans Affairs (Parra (Chair), Dutton (Vice Chair), Cohn, Kehoe, Matthews, Mullin, Nakano, and Wiggins)
139	61	—	Dymally
140	2069	—	Chavez
141	2313	—	Chan
142	—	218	Sher
143	—	1558	McPherson
144	—	1815	Johnson
145	—	1823	Hollingsworth
146	—	1910	Committee on Agriculture and Water Resources (Senators Machado (Chair), Alpert, Ducheny, Florez, Kuehl, Perata, and Torlakson)
147	434	—	Hancock (Coauthor: Assembly Member Canciamilla) (Coauthors: Senators Perata and Torlakson)
148	—	29	Figueroa
149	—	526	Torlakson and Dunn
150	—	1034	Murray (Coauthors: Senators Romero and Speier) (Coauthors: Assembly Members Longville and Reyes)
151	—	1134	Chesbro (Coauthor: Assembly Member Berg)
152	—	1260	Murray
153	—	1278	Committee on Natural Resources and Wildlife (Senators Kuehl (Chair), Alpert, Bowen, Denham, Hollingsworth, Oller, Ortiz, Sher, and Torlakson)
154	—	1285	Margett
155	—	1310	Johnson
156	—	1326	Perata
157	—	1362	Figueroa
158	—	1382	Murray
159	—	1441	Kuehl
160	—	1495	Machado and Karnette
161	152	—	Levine
162	1249	—	Pacheco
163	1260	—	Matthews
164	1596	—	Frommer
165	1694	—	Wiggins
166	2238	—	Spitzer (Coauthors: Assembly Members La Malfa, Maze, and Samuelian)
167	2257	—	Salinas
168	2496	—	Shirley Horton
169	2913	—	Salinas
170	2920	—	Laird
171	3078	—	Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Bates, Hancock, Jackson, Laird, Lieber, Longville, Montanez, and Steinberg)
172	—	1265	Committee on Natural Resources and Wildlife (Senators Kuehl (Chair), Alpert, Bowen, Denham, Hollingsworth, Oller, Ortiz, Sher, and Torlakson)
173	1984	—	Wolk
174	2845	—	La Suer
175	2877	—	Aghazarian
176	—	1637	Committee on Banking, Commerce, and International Trade (Senators Florez (Chair), Ducheny, Karnette, Murray, and Perata)
177	—	1277	Ackerman
178	—	1746	Ackerman
179	1268	—	Wiggins
180	1870	—	Maldonado
181	2207	—	Levine (Principal coauthors: Assembly Members Koretz, Liu, Montanez, Pavley, and Strickland) (Principal coauthor: Senator Alarcon)
182	3081	—	Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Bates, Hancock, Jackson, Laird, Lieber, Longville, Montanez, Pacheco, and Steinberg)
183	3082	—	Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Bates, Hancock, Jackson, Laird, Lieber, Longville, Montanez, Pacheco, and Steinberg)
184	—	1314	Ortiz
185	—	1358	Escutia and Brulte
186	—	1626	Poochigian (Principal coauthor: Assembly Member Pacheco)
187	—	1826	Poochigian
188	1787	—	Bogh (Coauthors: Assembly Members Bates, Benoit, Berg, Chu, Houston, Kehoe, Leslie, Levine, Longville, Nakano, Oropeza, Parra, Pavley, Reyes, Salinas, and Spitzer)
189	1855	—	Maze
190	2355	—	Oropeza
191	2660	—	Leno
192	2720	—	Laird
193	—	111	Knight
194	—	1832	Cedillo
195	—	409	Hollingsworth (Coauthors: Senators Alpert, Battin, Denham, Ducheny, Johnson, Margett, Torlakson, and Vincent) (Coauthors: Assembly Members Bates, Benoit, Bogh, Cogdill, Daucher, Frommer, Haynes, Pacheco, Samuelian, and Spitzer)
196	—	1130	Scott
197	—	1150	Burton
198	—	1236	Murray
199	—	1663	Machado (Principal coauthor: Assembly Member Steinberg) (Coauthor: Assembly Member Cox)
200	—	1880	Committee on Revenue and Taxation (Senators Cedillo (Chair), Alpert, Bowen, and Burton)
201	279	—	Cohn
202	1930	—	Negrete McLeod (Principal coauthor: Assembly Member Cogdill)
203	1951	—	Benoit
204	2552	—	Leno
205	2560	—	Montanez
206	2854	—	Laird (Principal coauthors: Assembly Members Chavez, Daucher, Hancock, La Malfa, Longville, Maze, Montanez, and Salinas)
207	3101	—	Committee on Elections, Redistricting and Constitutional Amendments (Longville (Chair), Jerome Horton, Laird, Leno, Levine, Samuelian, and Strickland)
208	—	1113	Committee on Budget and Fiscal Review
209	—	1119	Committee on Budget and Fiscal Review
210	—	1099	Committee on Budget and Fiscal Review
211	—	1096	Committee on Budget and Fiscal Review
212	—	1098	Committee on Budget and Fiscal Review

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
213	—	1101	Committee on Budget and Fiscal Review
214	—	1105	Committee on Budget and Fiscal Review
215	—	1106	Committee on Budget and Fiscal Review
216	—	1108	Committee on Budget and Fiscal Review
217	—	1110	Cedillo
218	—	1111	Committee on Budget and Fiscal Review
219	—	1112	Committee on Budget and Fiscal Review
220	—	1120	Committee on Budget and Fiscal Review
221	—	1809	Dunn
222	493	—	Salinas (Coauthor: Senator McPherson)
223	—	631	McPherson (Principal coauthor: Senator Denham) (Principal coauthor: Assembly Member Matthews) (Coauthor: Senator Brulte)
224	—	694	Committee on Natural Resources and Wildlife (Senators Kuehl (Chair), Alpert, Bowen, Denham, Hollingsworth, Oller, Ortiz, Sher, and Torlakson)
225	—	1097	Committee on Budget and Fiscal Review
226	—	1100	Committee on Budget and Fiscal Review
227	—	1102	Committee on Budget and Fiscal Review
228	—	1103	Committee on Budget and Fiscal Review
229	—	1104	Committee on Budget and Fiscal Review
230	—	1107	Committee on Budget and Fiscal Review
231	—	1603	Committee on Public Employment and Retirement (Senators Soto (Chair), Escutia, and Karnette)
232	—	1183	Margett
233	—	1448	Alpert (Coauthor: Senator Scott)
234	343	—	Chan
235	509	—	Jerome Horton
236	1572	—	Lieber
237	1736	—	Committee on Veterans Affairs (Parra (Chair), Cohn, Matthews, Mullin, Nakano, Runner, Salinas, and Wyland)
238	2823	—	Benoit
239	3000	—	Mountjoy and Runner (Coauthors: Assembly Members La Malfa and Leslie) (Coauthors: Senators Denham and Morrow)
240	2254	—	Aghazarian
241	2635	—	Canciamilla
242	2734	—	Strickland
243	—	1226	Machado (Coauthors: Assembly Members Wiggins and Wolk)
244	—	1677	Knight
245	—	1776	Bowen
246	—	1840	Denham
247	1232	—	Lowenthal, Koretz, and Ridley-Thomas
248	2905	—	Spitzer
249	—	749	Escutia (Coauthors: Senators Soto and Speier)
250	—	1391	Romero (Coauthors: Assembly Members Chan, Koretz, Lieber, and Liu)
251	—	1437	Speier
252	—	1775	Ortiz
253	—	1301	Vincent
254	—	1306	Ackerman
255	—	1517	Ashburn (Coauthors: Senators Denham and Oller) (Coauthors: Assembly Members Bates, Benoit, Chavez, Cogdill, Lieber, Maddox, Maze, Pacheco, Plescia, Runner, and Samuelian)
256	—	1643	Murray and Vincent (Coauthors: Assembly Members Dymally, Jerome Horton, Longville, Ridley-Thomas, and Wesson)
257	—	1771	Scott
258	—	1651	Morrow
259	—	1764	Speier (Coauthor: Senator Alpert) (Coauthor: Assembly Member Nakanishi)
260	—	1816	Vincent
261	1073	—	Dutton, Chavez, La Suer, and Parra (Principal coauthor: Assembly Member Maze) (Coauthors: Assembly Members Aghazarian, Bates, Bogh, Campbell, Cogdill, Cox, Daucher, Harman, Houston, Leslie, Maddox, Mountjoy, Mullin, Plescia, Runner, Strickland, and Wyland)
262	1091	—	Negrete McLeod (Coauthors: Assembly Members Pavley and Yee)
263	1554	—	Keene
264	1969	—	Negrete McLeod
265	2186	—	Leslie
266	2364	—	Correa
267	2480	—	Campbell
268	2711	—	Leno
269	2755	—	Strickland
270	2791	—	Simitian
271	2839	—	Daucher (Principal coauthor: Senator Figueroa)
272	2885	—	Jerome Horton
273	—	1181	Margett
274	—	1189	Chesbro
275	—	1647	Perata
276	1780	—	Committee on Governmental Organization (Jerome Horton (Chair), Strickland (Vice Chair), Bermudez, Calderon, Canciamilla, Chavez, Cohn, Corbett, Frommer, Harman, La Suer, Levine, Liu, Maddox, Negrete McLeod, Nunez, Oropeza, Reyes, Samuelian, Wiggins, and Yee)
277	2397	—	Shirley Horton
278	2538	—	Strickland
279	2557	—	Koretz
280	2844	—	La Suer
281	2866	—	Frommer
282	3016	—	Pavley (Coauthors: Assembly Members Koretz, Lieber, Liu, and Salinas) (Coauthor: Senator Romero)
283	—	1847	Perata
284	—	1092	Committee on Local Government (Senators Torlakson (Chair), Ackerman, Hollingsworth, Machado, Margett, Perata, and Soto)
285	—	1093	Committee on Local Government (Senators Torlakson (Chair), Ackerman, Hollingsworth, Machado, Margett, Perata, and Soto)
286	—	1264	Committee on Natural Resources and Wildlife (Senators Kuehl (Chair), Alpert, Bowen, Denham, Hollingsworth, Oller, Ortiz, Sher, and Torlakson)
287	—	1621	Machado

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
288	—	1687	Murray
289	—	1516	Machado (Principal coauthor: Assembly Member Matthews)
290	1956	—	Wolk (Principal coauthor: Senator Bowen)
291	2037	—	La Suer
292	2749	—	Dutton
293	99	—	Cox
294	539	—	Laird
295	911	—	Longville
296	1356	—	Cohn
297	1530	—	Negrete McLeod (Coauthor: Senator Romero)
298	1986	—	Wolk
299	2018	—	Chu
300	2237	—	Parra
301	2292	—	Wolk
302	2351	—	Corbett
303	2469	—	Committee on Higher Education (Liu (Chair), Pacheco (Vice Chair), Bogh, Shirley Horton, Jackson, Lowenthal, Matthews, Nakanishi, and Negrete McLeod)
304	2523	—	Frommer
305	2669	—	Garcia (Principal coauthor: Assembly Member Steinberg) (Principal coauthor: Senator Escutia)
306	2674	—	Leno
307	2811	—	Runner
308	3032	—	Yee
309	3063	—	Committee on Higher Education (Liu (Chair), Pacheco (Vice Chair), Jackson, Matthews, and Negrete McLeod)
310	—	260	Romero (Coauthor: Senator Kuehl) (Coauthors: Assembly Members Berg and Maze)
311	2199	—	Kehoe (Coauthors: Assembly Members Bogh, Calderon, Cohn, Dutra, Jerome Horton, Koretz, Mountjoy, Nakano, Ridley-Thomas, and Vargas)
312	2156	—	Reyes
313	2224	—	Cohn
314	3027	—	Committee on Agriculture (Matthews (Chair), Berg, Maze, Oropeza, Parra, Reyes, Salinas, Vargas, and Wiggins)
315	2747	—	Garcia
316	2851	—	Laird (Principal coauthors: Assembly Members Chavez, Daucher, Hancock, La Malfa, Longville, Maze, Montanez, and Salinas)
317	2840	—	Corbett
318	224	—	Kehoe
319	656	—	Corbett
320	1373	—	Daucher and Chan
321	1636	—	Kehoe
322	1801	—	Pavley (Coauthors: Assembly Members Corbett, Cox, Jerome Horton, Jackson, Kehoe, Koretz, Lieber, Levine, Longville, Mullin, and Wolk) (Coauthor: Senator Kuehl)
323	1925	—	Haynes
324	2014	—	Committee on Banking and Finance (Wiggins (Chair), Bogh, Calderon, Chan, Chavez, Corbett, Correa, Cox, Houston, Leslie, Montanez, Strickland, and Vargas)
325	2027	—	Chan
326	2031	—	Cogdill
327	2137	—	Steinberg
328	2347	—	Maddox
329	2502	—	Keene
330	2690	—	Hancock
331	2723	—	Laird
332	2795	—	Wolk
333	2835	—	Plescia (Principal coauthor: Senator Alpert) (Coauthor: Senator Morrow)
334	2872	—	Maddox
335	3043	—	Yee
336	—	871	Torlakson
337	—	1623	Johnson
338	340	—	Frommer and Cohn (Coauthors: Assembly Members Bates, Benoit, Chavez, Jackson, Koretz, Mullin, Oropeza, and Pacheco) (Coauthor: Senator Bowen)
339	1704	—	Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)
340	1945	—	Nakano
341	2074	—	Runner
342	2184	—	Plescia (Coauthors: Assembly Members Shirley Horton and Wyland)
343	2210	—	Liu
344	2226	—	Spitzer (Principal coauthor: Senator Speier) (Coauthors: Assembly Members Bates, Houston, and Maze)
345	2296	—	Leno and Aghazarian
346	2376	—	Bates (Coauthors: Assembly Members Harman, Maze, and Pacheco) (Coauthor: Senator Oller)
347	2390	—	Reyes and Chan
348	2429	—	Chavez (Principal coauthor: Assembly Member Cohn)
349	2615	—	Committee on Higher Education (Liu (Chair), Jackson, Lowenthal, Matthews, Nakanishi, and Negrete McLeod)
350	2873	—	Garcia
351	3023	—	Matthews (Principal coauthor: Assembly Member Nakanishi)
352	3045	—	Committee on Agriculture (Matthews (Chair), Berg, Oropeza, Parra, Salinas, Vargas, and Wiggins)
353	3071	—	Committee on Revenue and Taxation (Bermudez (Chair), Wyland (Vice Chair), Harman, and Laird)
354	3073	—	Committee on Revenue and Taxation (Bermudez (Chair), Wyland (Vice Chair), Harman, Laird, and Leno)
355	3077	—	Committee on Local Government (Salinas (Chair), Lieber (Vice Chair), Daucher, Garcia, La Suer, Leno, Mullin, Steinberg, and Wiggins)
356	3080	—	Committee on Judiciary (Corbett (Chair), Hancock, Jackson, Laird, Lieber, Longville, Montanez, and Steinberg)
357	—	64	Speier (Coauthors: Assembly Members Benoit, Bogh, Calderon, Cohn, Diaz, Dutra, Koretz, Nakano, Vargas, and Wyland)
358	72	—	Bates (Coauthors: Assembly Members Benoit, Campbell, Cogdill, Cox, Daucher, La Suer, Maddox, Maze,

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
			Pacheco, Plescia, Runner, and Samuelian) (Coauthors: Senators Denham and Morrow)
359	323	—	Parra
360	403	—	Correa
361	425	—	Campbell (Principal coauthor: Senator Johnson)
362	474	—	Salinas
363	1138	—	Frommer
364	1175	—	Koretz
365	1272	—	Dutra
366	1393	—	Kehoe
367	1403	—	Nunez and McCarthy (Principal coauthors: Senators Burton and Ackerman) (Coauthors: Assembly Members Cohn, Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee) (Coauthors: Senators Aanestad, Alarcon, Alpert, Ashburn, Battin, Bowen, Brulte, Cedillo, Chesbro, Denham, Ducheny, Dunn, Escutia, Figueroa, Florez, Hollingsworth, Johnson, Karnette, Kuehl, Machado, Margett, McClintock, McPherson, Morrow, Murray, Oller, Ortiz, Perata, Poochigian, Romero, Scott, Sher, Soto, Speier, Torlakson, Vasconcellos, and Vincent)
368	1667	—	Kehoe (Principal coauthor: Assembly Member Pavley) (Principal coauthor: Senator Escutia) (Coauthors: Assembly Members Corbett, Frommer, Goldberg, Koretz, La Suer, Nakano, Oropeza, Parra, Reyes, and Spitzer) (Coauthors: Senators Machado, Margett, and Ortiz)
369	1706	—	Committee on Judiciary (Corbett (Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)
370	1799	—	Mullin and Bates (Coauthors: Assembly Members Berg, Bermudez, Daucher, Frommer, Goldberg, Hancock, Koretz, Laird, La Malfa, Lieber, Liu, Maze, Nakanishi, Pavley, Runner, Salinas, Steinberg, Strickland, and Vargas) (Coauthors: Senators Kuehl and Margett)
371	1847	—	Koretz (Coauthors: Assembly Members Jerome Horton, Kehoe, and Matthews)
372	1894	—	Longville
373	1913	—	Cohn
374	1934	—	Leslie
375	1948	—	Aghazarian
376	1955	—	Vargas
377	2063	—	Negrete McLeod
378	2680	—	Negrete McLeod (Principal coauthor: Assembly Member Wolk) (Coauthor: Senator Machado)
379	2982	—	Pacheco
380	—	246	Escutia
381	—	1088	Scott
382	—	1670	Romero
383	—	1426	Ducheny
384	—	1490	Committee on Judiciary (Senators Escutia (Chair), Cedillo, Ducheny, Kuehl, and Sher)
385	—	1855	Alpert (Coauthors: Assembly Members Benoit, Bogh, Calderon, Cohn, Correa, Cox, Diaz, Dutra, Frommer, Jerome Horton, Koretz, Mountjoy, Nakano, Richman, Ridley-Thomas, Vargas, and Wyland)
386	—	87	Hollingsworth
387	—	492	Ducheny
388	—	615	Cedillo
389	—	785	Ortiz
390	—	792	Sher (Coauthors: Assembly Members Mullin and Yee)
391	—	1085	Murray (Coauthor: Senator Bowen) (Coauthors: Assembly Members Benoit, Cox, and Maze)
392	—	1087	Soto, Alarcon, Alpert, Cedillo, Chesbro, Ducheny, Escutia, Karnette, Kuehl, Machado, Ortiz, Romero, Speier, Torlakson, and Vincent (Principal coauthor: Assembly Member Parra) (Coauthors: Assembly Members Bermudez, Koretz, Lieber, Nation, Pavley, and Salinas)
393	—	1213	Scott
394	—	1359	Brulte and Escutia
395	—	1360	Brulte and Escutia
396	—	1375	Scott (Principal coauthor: Assembly Member Liu)
397	—	1384	Scott
398	—	1439	Speier and Soto
399	—	1578	Romero (Coauthor: Assembly Member Chavez)
400	—	1604	Ashburn
401	—	1662	Soto
402	—	1689	Poochigian (Coauthors: Assembly Members Bermudez, Frommer, and Wyland)
403	—	1696	Torlakson and Speier (Coauthor: Assembly Member Levine)
404	—	1725	Knight
405	—	1796	Committee on Public Safety (Senators McPherson (Chair), Burton, Margett, Romero, Sher, and Vasconcellos)
406	—	1819	Ashburn
407	—	1831	Cedillo
408	42	—	Daucher
409	79	—	Dutra
410	214	—	Shirley Horton (Principal coauthor: Senator Chesbro) (Coauthors:

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
			Assembly Members Chavez, Cogdill, Diaz, Dutton, Harman, Kehoe, Longville, Maze, Plescia, Runner, Spitzer, and Wyland) (Coauthors: Senators Aanestad and Soto)
411	321	—	Cogdill (Coauthor: Assembly Member Frommer)
412	1416	—	Bermudez
413	1493	—	Runner (Principal coauthors: Assembly Members Matthews and Yee) (Coauthor: Assembly Member Leno)
414	1794	—	Dutra (Coauthors: Assembly Members Berg, Corbett, Goldberg, Leno, Nation, and Negrete McLeod)
415	1854	—	Simitian
416	1859	—	Nakano
417	1999	—	Committee on Higher Education (Liu (Chair), Pacheco (Vice Chair), Jackson, Lowenthal, Matthews, and Negrete McLeod)
418	2032	—	Dutra and Kehoe (Principal coauthor: Senator Alpert) (Coauthors: Assembly Members Shirley Horton and Houston)
419	2075	—	Benoit
420	2139	—	Maze (Coauthor: Assembly Member Pavley)
421	2140	—	Runner
422	2353	—	Leslie
423	2398	—	Maze (Principal coauthors: Assembly Members Parra and Reyes)
424	2401	—	Harman
425	2450	—	Canciamilla (Coauthor: Assembly Member Matthews) (Coauthor: Senator Machado)
426	2464	—	Pacheco
427	2517	—	Berg (Coauthor: Senator Chesbro)
428	2520	—	Vargas
429	2527	—	Frommer (Principal coauthor: Assembly Member Maze)
430	2606	—	Plescia
431	2760	—	Berg
432	2784	—	Pavley, Strickland, and Jackson (Principal coauthors: Senators Kuehl and McClintock) (Coauthor: Assembly Member Richman)
433	2830	—	McCarthy
434	2876	—	Frommer
435	2894	—	Wiggins
436	3046	—	Committee on Agriculture (Matthews (Chair), Berg, Oropeza, Parra, Salinas, Vargas, and Wiggins)
437	3085	—	Committee on Governmental Organization (Jerome Horton (Chair), Plescia (Vice Chair), Bermudez, Calderon, Canciamilla, Chavez, Corbett, Dutra, Dymally, Firebaugh, Levine, Liu, Longville, Maddox, Negrete McLeod, Oropeza, Reyes, Wiggins, and Wyland)
438	3096	—	Committee on Governmental Organization (Jerome Horton (Chair), Plescia (Vice Chair), Bermudez, Calderon, Chavez, Corbett, Dutra, Dymally, Firebaugh, Harman, Levine, Negrete McLeod, Oropeza, Reyes, Samuelian, Wiggins, and Yee)
439	502	—	Canciamilla
440	753	—	Leslie and Shirley Horton (Coauthors: Assembly Members Bates, Benoit, Dutton, Garcia, Maze, Nakanishi, Samuelian, Strickland, and Wyland) (Coauthors: Senators Battin and Hollingsworth)
441	979	—	Negrete McLeod
442	1586	—	Committee on Public Employees, Retirement and Social Security (Negrete McLeod (Chair), Levine (Vice Chair), Chan, Correa, Kehoe, Laird, and Nakanishi)
443	1725	—	Matthews
444	1726	—	Committee on Agriculture (Matthews (Chair), Maldonado (Vice Chair), Berg, Cogdill, Maddox, Maze, Oropeza, Parra, Reyes, Salinas, and Vargas)
445	2021	—	Chu
446	2054	—	Wolk
447	2056	—	Aghazarian
448	2159	—	Reyes
449	2307	—	Richman
450	2436	—	Bates (Coauthors: Assembly Members Shirley Horton and Pacheco)
451	2613	—	Haynes (Coauthor: Assembly Member Correa)
452	2626	—	Plescia
453	2632	—	Bogh
454	2716	—	Lowenthal
455	2816	—	Daucher (Coauthor: Assembly Member Berg)
456	2909	—	Salinas (Coauthors: Assembly Members Dymally and Reyes) (Coauthor: Senator Soto)
457	2916	—	Negrete McLeod
458	2921	—	Cox
459	3024	—	Committee on Agriculture (Matthews (Chair), Berg, Maze, Oropeza, Parra, Reyes, Salinas, Vargas, and Wiggins)
460	3025	—	Committee on Agriculture (Matthews (Chair), Berg, Maze, Oropeza, Parra, Reyes, Salinas, Vargas, and Wiggins)
461	3070	—	Committee on Banking and Finance (Wiggins (Chair), Bogh (Vice Chair), Calderon, Chan, Chavez, Corbett, Correa, Cox, Houston, Montanez, Strickland, and Vargas)
462	—	431	Ortiz
463	—	598	Machado
464	—	928	Aanestad (Coauthor: Senator Ackerman)
465	—	1138	Hollingsworth
466	—	1206	Soto
467	—	1548	Figueroa
468	129	—	Cohn (Coauthor: Assembly Member Steinberg)
469	710	—	Correa
470	969	—	Correa (Coauthor: Assembly Member Maddox)
471	2067	—	Harman
472	2148	—	Diaz (Coauthors: Assembly Members Liu and Maze)
473	3022	—	Committee on Housing and Community Development (Lowenthal (Chair), Cogdill, Dutra, Kehoe, Mullin, Runner, Salinas, and Steinberg)
474	3076	—	Mullin

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
475	3118	—	Chu
476	—	7	Brulte and Burton (Principal coauthor: Senator Alpert)
477	—	419	Scott (Coauthors: Assembly Members Cohn and Koretz)
478	—	604	Perata
479	—	1037	Sher
480	—	1153	Chesbro (Principal coauthor: Assembly Member Wiggins)
481	1820	—	Maze
482	—	1254	Soto
483	—	1340	Perata
484	—	1353	Perata
485	—	1650	Chesbro (Principal coauthor: Assembly Member Wiggins) (Coauthors: Senators Bowen, Ducheny, Hollingsworth, Margett, Morrow, and Soto) (Coauthors: Assembly Members Aghazarian, Berg, Bermudez, Cogdill, Leslie, Matthews, Maze, Mountjoy, Nakanishi, Parra, Reyes, and Wolk)
486	—	1794	Perata
487	—	1812	Vincent
488	2208	—	Kehoe (Principal coauthors: Assembly Members Koretz and Lieber) (Coauthors: Assembly Members Dymally, Goldberg, Laird, Leno, Levine, Nation, Ridley-Thomas, and Wolk) (Coauthors: Senators Kuehl, Romero, Soto, Speier, and Vasconcellos)
489	2759	—	Levine and Wiggins (Principal coauthor: Assembly Member Koretz) (Coauthors: Assembly Members Goldberg, Jackson, Laird, and Leno) (Coauthor: Senator Soto)
490	—	1344	Margett
491	—	1347	Ducheny
492	—	1363	Ducheny
493	—	1895	Burton
494	50	—	Koretz (Coauthors: Assembly Members Chu, Goldberg, Hancock, Kehoe, Levine, Lieber, Mullin, Ridley-Thomas, Vargas, and Yee) (Coauthors: Senators Kuehl, Perata, Romero, Soto, and Torlakson)
495	—	898	Burton
496	—	1781	Knight
497	105	—	Wiggins (Coauthors: Assembly Members Berg, Lowenthal, Matthews, Pavley, Reyes, Salinas, and Wolk)
498	107	—	Steinberg
499	1222	—	Montanez
500	1873	—	Hancock
501	2072	—	Wyland
502	2173	—	Parra
503	2350	—	Chavez
504	2681	—	Negrete McLeod
505	2785	—	Nakano
506	3094	—	Committee on Public Employees, Retirement and Social Security (Negrete McLeod (Chair), Levine (Vice Chair), Chan, Correa, and Kehoe)
507	—	58	Johnson, Alpert, Battin, Florez, Knight, McPherson, and Speier (Coauthors: Assembly Members Bates, Benoit, Campbell, Cogdill, Daucher, Dutton, La Malfa, Longville, Maddox, Mountjoy, Nakanishi, Pacheco, Plescia, Spitzer, Strickland, and Wyland)
508	—	922	Soto
509	—	1745	Perata
510	—	1768	Romero
511	1432	—	Firebaugh (Principal coauthor: Assembly Member Richman) (Coauthors: Assembly Members Bermudez, La Suer, and Spitzer) (Coauthors: Senators Margett and McPherson)
512	1433	—	Spitzer (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Chavez, Cogdill, Cox, Dutton, Harman, Maze, Nakanishi, Pacheco, and Strickland) (Coauthors: Senators Aanestad, Johnson, and Oller)
513	1655	—	Negrete McLeod
514	1663	—	Dutra (Coauthors: Assembly Members Benoit and Spitzer)
515	1814	—	Oropeza
516	1931	—	La Malfa
517	2160	—	Reyes
518	2201	—	Firebaugh
519	2439	—	Haynes (Coauthor: Senator Hollingsworth)
520	2530	—	Levine
521	2676	—	Nakano
522	2814	—	Simitian
523	2927	—	Wiggins (Principal coauthor: Senator Chesbro) (Coauthors: Assembly Members Benoit, Bermudez, Cox, Shirley Horton, Maze, and Nation) (Coauthor: Senator Bowen)
524	—	635	Dunn (Coauthor: Senator Romero) (Coauthor: Assembly Member Jackson)
525	—	647	Sher
526	—	1404	Soto
527	—	1881	Committee on Revenue and Taxation (Senators Cedillo (Chair), Alpert, Bowen, and Burton)
528	1338	—	Chavez (Coauthors: Assembly Members Benoit and Runner)
529	1711	—	Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)
530	1964	—	Leslie
531	2004	—	Committee on Business and Professions (Correa (Chair), Shirley Horton (Vice Chair), Aghazarian, Bermudez, Koretz, Leno, Maldonado, Maze, Nation, Vargas, Wyland, and Yee)
532	2170	—	Calderon
533	2234	—	Committee on Public Employees, Retirement and Social Security (Negrete McLeod (Chair), Levine (Vice Chair), Chan, Correa, and Kehoe)
534	2665	—	Leslie
535	2733	—	Strickland
536	2761	—	Leno
537	2942	—	Reyes
538	1990	—	Campbell
539	2062	—	Nakano

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
540	2514	—	Committee on Natural Resources (Jackson (Chair), Hancock, Koretz, Laird, Lieber, Lowenthal, and Wolk) (Principal coauthor: Assembly Member Oropeza)
541	—	815	Alpert
542	—	1622	Perata
543	—	1873	Burton
544	—	764	Morrow (Coauthors: Senators Denham, Ducheny, Margett, and Poochigian) (Coauthors: Assembly Members Bates, Benoit, Bermudez, Chavez, Correa, Cox, Dutton, Harman, Shirley Horton, La Suer, Mountjoy, Nation, Pacheco, Parra, Plescia, and Wyland)
545	—	904	Chesbro
546	—	1162	Machado (Principal coauthor: Assembly Member Parra) (Coauthor: Assembly Member Bermudez)
547	—	1193	Soto
548	—	1248	Bowen
549	1997	—	Committee on Higher Education (Liu (Chair), Jackson, Lowenthal, Matthews, Negrete McLeod, and Pacheco) (Coauthors: Senators Denham and McPherson)
550	—	1694	Torlakson and Speier (Coauthors: Senators Machado and Ortiz) (Coauthor: Assembly Member Liu)
551	—	1697	Torlakson and Speier (Coauthor: Assembly Member Levine)
552	—	1713	Machado
553	1982	—	Wolk
554	—	1322	Denham (Coauthors: Assembly Members Liu and Parra)
555	2205	—	Oropeza
556	2477	—	Liu (Coauthors: Assembly Members Berg, Jerome Horton, Jackson, Lowenthal, Matthews, and Negrete McLeod)
557	2691	—	Correa and Vargas (Principal coauthors: Assembly Members Bermudez, Chu, Lieber, Negrete McLeod, Salinas, and Spitzer)
558	3015	—	Runner
559	—	1089	Johnson
560	—	1303	Torlakson
561	—	1729	Chesbro
562	658	—	Nakano (Principal coauthor: Assembly Member Cox) (Principal coauthor: Senator Burton) (Coauthors: Assembly Members Bermudez, Canciamilla, Harman, Lieber, Maddox, Maldonado, Mullin, Nation, Oropeza, Parra, Pavley, Plescia, Steinberg, Strickland, and Wesson) (Coauthors: Senators Perata and Torlakson)
563	1408	—	Wolk (Coauthors: Senators Chesbro and Machado)
564	—	1545	Karnette and Denham and Assembly Members Cohn, Correa, Daucher, Frommer, Haynes, La Malfa, Maddox, Matthews, Maze, Negrete McLeod, Parra, Spitzer, and Wolk (Coauthors: Senators Aanestad, Battin, Ducheny, Escutia, Kuehl, McPherson, Perata, Romero, Soto, and Torlakson) (Coauthors: Assembly Members Bates, Benoit, Berg, Bogh, Calderon, Cogdill, Garcia, Goldberg, Kehoe, Leslie, Nakanishi, and Runner)
565	2222	—	Koretz (Coauthors: Assembly Members Lieber and Negrete McLeod) (Coauthor: Senator Soto)
566	—	30	Figueroa (Coauthor: Assembly Member Correa)
567	—	1090	Dunn
568	—	1145	Burton
569	—	1228	Perata
570	—	1388	Ortiz
571	—	1457	Murray
572	—	1542	Figueroa (Coauthors: Senators Aanestad and Vincent) (Coauthors: Assembly Members Correa, Nation, and Runner)
573	30	—	Richman (Principal coauthor: Senator Burton)
574	2228	—	Garcia
575	2167	—	Correa
576	1827	—	Cohn
577	3100	—	Committee on Elections, Redistricting and Constitutional Amendments (Longville (Chair), Samuelian (Vice Chair), Jerome Horton, Laird, Leno, Levine, and Strickland)
578	2485	—	Chan (Coauthors: Assembly Members Koretz and Pavley) (Coauthor: Senator Ducheny)
579	2066	—	Steinberg
580	1971	—	Lowenthal
581	1417	—	Pacheco
582	2161	—	Reyes
583	2150	—	Levine
584	3029	—	Matthews
585	2834	—	Canciamilla
586	2216	—	Nakanishi
587	—	524	Vasconcellos (Principal coauthor: Senator Burton)
588	—	1481	Chesbro
589	—	1874	Alpert (Coauthor: Assembly Member Plescia)
590	—	1773	Soto
591	—	1458	Johnson (Coauthor: Assembly Member Jerome Horton)
592	—	1577	Committee on Elections and Reapportionment (Senators Perata (Chair), Escutia, and Murray)
593	—	1797	Committee on Public Safety (Senators McPherson (Chair), Burton, Margett, Romero, Sher, and Vasconcellos)
594	—	1848	Ashburn (Principal coauthor: Senator Romero) (Coauthor: Assembly Member Correa)
595	—	1541	Margett
596	1227	—	McCarthy
597	1353	—	Matthews
598	1489	—	Negrete McLeod
599	1728	—	Committee on Insurance (Vargas (Chair), Calderon, Chavez, Correa, Diaz, Dutra, Jerome Horton, Koretz, Nakano, and Ridley-Thomas)
600	1953	—	Vargas
601	2384	—	Nakano (Coauthor: Assembly Member Lieber)

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
602	2431	—	Steinberg (Coauthor: Assembly Member Koretz) (Coauthor: Senator Bowen)
603	2591	—	Leno
604	2878	—	Aghazarian
605	2962	—	Pavley (Coauthors: Assembly Members Koretz, Lieber, and Maze)
606	—	231	Scott and Murray (Coauthor: Assembly Member Koretz)
607	—	1858	Dunn (Principal coauthors: Assembly Members Negrete McLeod and Spitzer)
608	—	1159	Vasconcellos (Principal coauthors: Assembly Members Berg and Nation) (Coauthors: Assembly Members Goldberg, Hancock, Jerome Horton, Koretz, Laird, Levine, and Vargas)
609	—	1385	Burton (Principal coauthor: Senator Kuehl) (Coauthor: Senator Romero) (Coauthors: Assembly Members Dymally, Goldberg, Jackson, and Leno)
610	2115	—	Committee on Budget (Steinberg (Chair), Bermudez, Chan, Diaz, Dymally, Goldberg, Hancock, Jackson, Levine, Liu, Montanez, Nakano, Pavley, Reyes, Simitian, and Wolk)
611	—	509	Figueroa
612	—	1155	Machado
613	—	1201	Torlakson
614	—	1214	Kuehl
615	—	1233	Committee on Transportation (Senators Murray (Chair), Florez, Karnette, Perata, Scott, Soto, and Torlakson)
616	—	1280	Ortiz (Principal coauthors: Assembly Members Cox and Steinberg)
617	—	1506	Murray and Brulte (Principal coauthors: Assembly Members Chavez and McCarthy)
618	—	1568	Sher
619	—	1749	Karnette
620	466	—	Steinberg
621	578	—	Leno
622	—	1176	Dunn
623	890	—	Levine
624	1068	—	Liu
625	1155	—	Liu
626	1369	—	Pavley
627	1394	—	Levine and Montanez
628	1504	—	Spitzer (Coauthors: Assembly Members Bates, Bogh, Bermudez, Cox, Daucher, Dutton, Harman, Haynes, Shirley Horton, Maddox, Maldonado, Maze, McCarthy, Pacheco, and Runner) (Coauthors: Senators Johnson and Oller)
629	1776	—	Committee on Banking and Finance (Wiggins (Chair), Bogh, Calderon, Chan, Chavez, Correa, Houston, Montanez, and Vargas)
630	1793	—	Yee (Principal coauthors: Assembly Members Lieber and Montanez) (Coauthors: Assembly Members Koretz, Mullin, and Vargas) (Coauthor: Senator Kuehl)
631	1896	—	Jerome Horton
632	2820	—	Daucher
633	1994	—	Berg
634	2030	—	Cogdill
635	2103	—	Negrete McLeod
636	2127	—	Levine
637	2318	—	Hancock
638	2498	—	Longville
639	2509	—	Nakanishi
640	2558	—	Plescia (Coauthor: Assembly Member Wyland) (Coauthors: Senators Alpert, Ducheny, and Morrow)
641	2587	—	Chan
642	2638	—	Cogdill
643	2661	—	Steinberg
644	2701	—	Runner and Campbell
645	2817	—	Salinas (Coauthor: Assembly Member Diaz)
646	2869	—	Levine
647	2870	—	Mullin
648	2918	—	Laird
649	2955	—	McCarthy
650	3047	—	Committee on Transportation (Oropeza (Chair), Berg, Chan, Chu, Houston, Kehoe, Liu, Longville, Nakano, Parra, Pavley, and Salinas)
651	3050	—	Committee on Transportation (Oropeza (Chair), Berg, Chan, Chu, Kehoe, Liu, Longville, Nakano, Parra, Pavley, and Salinas)
652	780	—	Cogdill (Principal coauthor: Senator Poochigian) (Coauthor: Assembly Member Harman)
653	1240	—	Mullin
654	1875	—	Maldonado
655	1881	—	Berg (Coauthors: Assembly Members Chan and Hancock) (Coauthors: Senators Chesbro, Perata, and Torlakson)
656	2005	—	Aghazarian
657	2122	—	Committee on Budget (Steinberg (Chair), Bermudez, Chan, Diaz, Dymally, Goldberg, Hancock, Jackson, Levine, Liu, Montanez, Nakano, Pavley, Reyes, Simitian, and Wolk)
658	2286	—	Mountjoy
659	2533	—	Salinas
660	2629	—	Salinas
661	2821	—	Daucher
662	3008	—	Chan
663	3033	—	Yee
664	—	855	Machado (Coauthor: Assembly Member Wolk)
665	—	1269	Morrow
666	—	1484	Ackerman (Coauthors: Senators Aanestad, Battin, Denham, Margett, and Oller) (Coauthors: Assembly Members Bogh, Cogdill, Cox, Daucher, Dutra, Garcia, Maddox, Mountjoy, Pacheco, Samuelian, and Spitzer)
667	—	1546	Figueroa (Coauthors: Senators Aanestad and Vincent) (Coauthors: Assembly Members Correa, Nation, and Runner)
668	—	1639	Alarcon (Principal coauthor: Assembly Member Lieber)
669	—	1654	McPherson
670	—	1865	Aanestad
671	868	—	Parra (Coauthor: Assembly Member Salinas)
672	1462	—	Salinas

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
673	164	—	Wolk and Wyland
674	672	—	Montanez (Coauthors: Assembly Members Dymally, Lieber, Mullin, and Wiggins) (Coauthors: Senators Ashburn, Florez, and Kuehl)
675	1684	—	Leno and Oropeza
676	2007	—	Committee on Business and Professions (Correa (Chair), Aghazarian, Bermudez, Corbett, Shirley Horton, Koretz, Leno, Maldonado, Maze, Nation, Vargas, Wyland, and Yee)
677	2155	—	Vargas (Principal coauthor: Senator Alpert)
678	2342	—	Jackson (Coauthors: Assembly Members Chu, Laird, Lieber, Liu, and Longville) (Coauthor: Senator Vasconcellos)
679	2528	—	Lowenthal (Coauthors: Assembly Members Daucher and Maddox)
680	2581	—	Lieber
681	2706	—	Berg (Coauthors: Assembly Members Aghazarian, Garcia, Goldberg, Leslie, Matthews, Mullin, Parra, Salinas, Samuelian, Wiggins, and Wolk)
682	2717	—	Laird
683	2838	—	Salinas
684	2922	—	Laird
685	3020	—	Koretz (Principal coauthor: Assembly Member Jerome Horton) (Coauthors: Assembly Members Chu, Laird, and Mullin)
686	3041	—	Committee on Environmental Safety and Toxic Materials (Laird (Chair), Aghazarian (Vice Chair), Chu, Levine, Lieber, and Lowenthal)
687	—	142	Alpert (Principal coauthor: Assembly Member Cohn) (Coauthors: Senators Kuehl, McPherson, and Speier) (Coauthors: Assembly Members Lieber, Maddox, Maldonado, Plescia, Richman, and Spitzer)
688	—	318	Alpert
689	—	945	Sher
690	—	1488	Bowen
691	—	1549	Figueroa (Coauthors: Senators Aanestad and Vincent) (Coauthors: Assembly Members Correa, Runner, and Nation)
692	—	1565	Bowen
693	—	1856	Bowen
694	—	1891	Committee on Energy, Utilities and Communications (Senators Bowen (Chair), Alarcon, Battin, Dunn, Morrow, Murray, Sher, and Vasconcellos)
695	—	1913	Committee on Business and Professions (Senators Figueroa (Chair), Brulte, Cedillo, Machado, Murray, and Vincent)
696	2158	—	Lowenthal
697	2252	—	Montanez (Coauthors: Assembly Members Aghazarian, Benoit, Calderon, Leno, Maldonado, and Yee) (Coauthor: Senator McPherson)
698	—	1161	Alpert (Principal coauthors: Assembly Members Corbett and Wolk) (Coauthors: Senators Chesbro, Karnette, McPherson, Romero, Scott, Soto, Torlakson, and Vasconcellos)
699	—	1325	Kuehl
700	—	1234	Kuehl (Coauthor: Assembly Member Chu)
701	—	1615	Denham
702	2104	—	Committee on Budget (Steinberg (Chair), Bermudez, Canciamilla, Chan, Diaz, Dutra, Dymally, Goldberg, Hancock, Jackson, Laird, Levine, Lieber, Liu, Nakano, Pavley, Reyes, Simitian, and Wolk)
703	2128	—	Jackson (Coauthors: Assembly Members Bates, Berg, Dymally, Kehoe, Koretz, Laird, Leno, Liu, Lowenthal, Maldonado, Nation, Oropeza, Parra, Pavley, and Reyes)
704	2683	—	Lieber (Coauthor: Assembly Member Koretz) (Coauthor: Senator Machado)
705	389	—	Montanez (Principal coauthor: Senator Cedillo) (Coauthor: Senator Sher)
706	471	—	Simitian, Laird, and Nakano
707	923	—	Firebaugh and Pavley (Principal Coauthors: Assembly Members Steinberg and Chan) (Principal Coauthor: Senator Soto)
708	1701	—	Laird (Principal coauthor: Senator Sher)
709	1876	—	Chan (Coauthors: Assembly Members Hancock, Lieber, Mullin, Nakano, Nation, and Wiggins)
710	2093	—	Nakano and Laird
711	2185	—	Frommer (Coauthors: Assembly Members Chan and Cohn)
712	2420	—	La Malfa (Coauthors: Assembly Members Cox, Jackson, and Wolk)
713	2519	—	Berg (Coauthor: Senator Chesbro)
714	2529	—	Kehoe (Coauthor: Assembly Member Koretz)
715	2722	—	Laird
716	—	117	Machado (Coauthor: Senator Escutia)
717	—	805	Escutia
718	—	1245	Kuehl (Coauthors: Senators Bowen, Ducheny, Escutia, and Romero) (Coauthors: Assembly Members Bermudez, Jackson, Koretz, Maze, and Pavley)
719	—	1319	Burton and Alpert (Coauthors: Assembly Members Hancock, Jackson, Kehoe, Laird, Lieber, and Pavley)
720	—	1369	Kuehl
721	—	1459	Alpert (Coauthor: Assembly Member Harman)
722	—	1482	Sher
723	—	1526	Hollingsworth (Coauthor: Assembly Member Jackson)
724	2348	—	Mullin
725	2628	—	Pavley (Principal coauthor: Assembly Member Nakano) (Coauthors: Assembly Members Berg, Chavez, Frommer, Hancock, Harman, Levine, Lieber, Liu, Longville, Matthews, and Nation) (Coauthor: Senator Alarcon)
726	2600	—	Leslie and Laird

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
727	—	96	Alpert (Coauthor: Senator Aanestad) (Coauthors: Assembly Members Chan, Chavez, and Wolk)
728	—	1163	Dunn
729	—	1196	Cedillo (Principal coauthor: Assembly Member Cohn) (Coauthor: Senator Machado) (Coauthor: Assembly Member Lieber)
730	—	1273	Scott
731	—	1289	Machado
732	—	1334	Kuehl (Coauthor: Senator Romero) (Coauthors: Assembly Members Hancock, Koretz, and Liu)
733	—	1342	Speier and Romero
734	—	1352	Romero and Speier
735	—	1355	Aanestad
736	—	1400	Romero and Speier
737	—	1415	Brulte
738	—	1431	Speier and Romero
739	—	1464	Karnette (Coauthor: Assembly Member Levine)
740	—	1544	Figueroa (Coauthors: Senators Aanestad and Vincent) (Coauthors: Assembly Members Correa, Nation, and Runner)
741	—	1678	Dunn
742	—	1691	Vasconcellos
743	—	1785	Scott and Alpert (Coauthor: Senator McPherson) (Coauthor: Assembly Member Liu)
744	—	1889	Committee on Environmental Quality (Senators Sher (Chair), Chesbro, Figueroa, Kuehl, McPherson, and Romero)
745	488	—	Parra and Spitzer (Principal coauthor: Assembly Member Pacheco) (Coauthors: Assembly Members Bermudez, Calderon, Canciamilla, Chavez, Cohn, Correa, Diaz, Dutra, Firebaugh, Frommer, Jerome Horton, Kehoe, Lieber, Longville, Matthews, Montanez, Mullin, Nakano, Nunez, Reyes, Ridley-Thomas, Salinas, Steinberg, Vargas, Wesson, and Wiggins) (Coauthor: Senator Margett)
746	800	—	Kehoe
747	854	—	Koretz (Principal coauthor: Senator Romero) (Coauthor: Senator Alpert)
748	939	—	Yee
749	1020	—	Steinberg
750	1298	—	Hancock
751	1499	—	Liu
752	1721	—	Koretz
753	1733	—	Reyes, Campbell, Correa, Levine, and Matthews (Coauthors: Assembly Members Berg, Chavez, Chu, Diaz, Firebaugh, Frommer, Goldberg, Hancock, Laird, Leno, Lieber, Lowenthal, Montanez, Nakano, Ridley-Thomas, Steinberg, and Wesson) (Coauthors: Senators Bowen and Sher)
754	1836	—	Harman
755	1878	—	Chan (Coauthors: Assembly Members Hancock, Oropeza, and Pavley)
756	1975	—	Bermudez (Coauthors: Assembly Members Correa, Maze, and Vargas)
757	1987	—	Steinberg
758	2193	—	Nation (Coauthor: Senator Speier)
759	2303	—	Leno
760	2312	—	Dutra (Coauthors: Assembly Members Chavez, Cogdill, Dymally, Frommer, Koretz, Laird, Lieber, Lowenthal, Pavley, and Wiggins) (Coauthors: Senators Alpert, Denham, Florez, Kuehl, Romero, and Soto)
761	2395	—	Correa
762	2531	—	Bates (Coauthors: Assembly Members Benoit, Bermudez, Daucher, Harman, Haynes, Jerome Horton, Houston, Maze, Pacheco, Samuelian, Salinas, and Spitzer) (Coauthor: Senator McPherson)
763	2565	—	Parra
764	2672	—	Simitian
765	2677	—	Ridley-Thomas
766	2718	—	Laird
767	2758	—	Berg
768	2857	—	Laird
769	3042	—	Yee
770	3044	—	Yee
771	421	—	Steinberg (Coauthor: Senator Speier)
772	1510	—	Kehoe (Principal coauthors: Assembly Members Bates, Houston, La Suer, Maldonado, Mountjoy, Plescia, Vargas, and Wyland) (Principal coauthors: Senators Alpert, Battin, Ducheny, Hollingsworth, McPherson, Morrow, Poochigian, and Soto) (Coauthors: Assembly Members Aghazarian, Benoit, Bermudez, Chavez, Cogdill, Cox, Garcia, Shirley Horton, Jackson, Levine, Maddox, Matthews, Maze, Negrete McLeod, Nakanishi, Pacheco, Runner, Samuelian, Spitzer, and Strickland (Coauthors: Senators Ackerman, Ashburn, Cedillo, Denham, and Machado)
773	1867	—	Vargas (Principal coauthor: Senator Poochigian)
774	1906	—	Lowenthal
775	1910	—	Harman
776	2028	—	Koretz
777	2147	—	Kehoe
778	2165	—	Houston (Principal coauthor: Senator Poochigian) (Coauthors: Assembly Members Aghazarian, Matthews, and Nakanishi) (Coauthor: Senator Machado)
779	2251	—	Lowenthal
780	2288	—	Pacheco
781	2304	—	Richman
782	2328	—	Wyland (Coauthor: Assembly Member Chavez) (Coauthor: Senator Hollingsworth)
783	2719	—	Laird
784	2782	—	Benoit
785	2790	—	Pacheco
786	2846	—	Salinas
787	3088	—	Jerome Horton
788	2900	—	Laird (Coauthors: Assembly Members Dymally, Goldberg, Hancock, Kehoe,

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
			Leno, Lieber, Longville, and Nation) (Coauthor: Senator Kuehl)
789	2473	—	Wolk
790	594	—	Leno
791	—	849	Torlakson and Alpert
792	—	1147	Hollingsworth, Poochigian, and Soto (Principal coauthors: Senators Alpert, Battin, Ducheny, and Morrow) (Principal coauthors: Assembly Members Bates, Houston, Kehoe, La Suer, Mountjoy, Plescia, and Wyland) (Coauthors: Senators Ackerman, Ashburn, Cedillo, and Denham) (Coauthors: Assembly Members Benoit, Cogdill, Cox, Shirley Horton, Maddox, Maze, Pacheco, Runner, Samuelian, and Spitzer)
793	—	1507	Burton
794	—	1820	Machado
795	—	1210	Torlakson (Coauthor: Senator Ducheny) (Coauthor: Assembly Member Bates)
796	—	1742	McPherson
797	—	1845	Perata, Alpert, and Romero (Coauthor: Senator Kuehl) (Coauthors: Assembly Members Bates, Koretz, and Lieber)
798	384	—	Leslie (Coauthors: Assembly Members Cogdill, Daucher, Koretz, Maze, and Plescia) (Coauthors: Senators Denham, Johnson, Oller, and Romero)
799	1119	—	Nation
800	1845	—	Lowenthal
801	2040	—	La Suer
802	2120	—	Committee on Budget (Steinberg (Chair), Bermudez, Chan, Diaz, Dymally, Goldberg, Hancock, Jackson, Levine, Liu, Montanez, Nakano, Pavley, Reyes, Simitian, and Wolk)
803	2129	—	Chavez
804	2268	—	Samuelian
805	2306	—	Richman
806	2358	—	Steinberg (Principal coauthor: Assembly Member Garcia)
807	2409	—	Yee and Bates
808	2412	—	Yee (Principal coauthor: Assembly Member Bermudez) (Coauthors: Assembly Members Dutra and Koretz)
809	2428	—	Chu
810	2807	—	Steinberg
811	3079	—	Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Hancock, Jackson, Laird, Lieber, Longville, Montanez, and Steinberg)
812	—	1173	Ortiz
813	—	1376	Perata (Coauthor: Senator Vasconcellos)
814	—	1438	Johnson and Perata (Principal coauthor: Senator Murray) (Principal coauthor: Assembly Member Levine) (Coauthors: Senators Aanestad, Ackerman, Alarcon, Alpert, Ashburn, Brulte, Burton, Cedillo, Chesbro, Denham, Dunn, Escutia, Figueroa, Karnette, Kuehl, Machado, Margett, McClintock, McPherson, Ortiz, Poochigian, Romero, Scott, Soto, Speier, and Torlakson) (Coauthors: Assembly Members Aghazarian, Bates, Berg, Bermudez, Calderon, Canciamilla, Chan, Chavez, Cohn, Corbett, Correa, Cox, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Haynes, Jerome Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Steinberg, Strickland, Vargas, Wesson, Wolk, Wyland, and Yee)
815	—	1449	Johnson (Principal coauthor: Assembly Member Leno)
816	—	1712	Alpert
817	—	1730	Johnson (Coauthors: Senators Ackerman, Alpert, Ashburn, Bowen, Chesbro, Denham, Ducheny, Escutia, and Murray) (Coauthors: Assembly Members Bates, Cox, Frommer, Haynes, Houston, Maze, Pacheco, Runner, and Wyland)
818	—	1777	Ducheny
819	1000	—	Dutra
820	1127	—	Shirley Horton
821	2941	—	Bates (Coauthors: Assembly Members Benoit, Dutton, Harman, La Malfa, Maddox, Maze, Pacheco, and Strickland) (Coauthors: Senators McPherson and Oller)
822	3092	—	Jerome Horton
823	20	—	Lieber (Coauthor: Assembly Member Leno)
824	1077	—	Wesson (Coauthors: Assembly Members Mountjoy, Parra, Reyes, and Runner) (Coauthors: Senators Ashburn, Chesbro, Ducheny, and Soto)
825	1299	—	Daucher
826	1470	—	Ridley-Thomas
827	664	—	Lowenthal (Coauthor: Senator Kuehl)
828	1643	—	Ridley-Thomas (Coauthors: Assembly Members Kehoe, Lieber, and Montanez) (Coauthor: Senator Alarcon)
829	1886	—	Pavley (Principal coauthor: Assembly Member Leslie) (Coauthors: Assembly Members Bermudez, Diaz, Dymally, Lieber, and Mullin) (Coauthor: Senator Kuehl)
830	2010	—	Hancock (Principal coauthors: Assembly Members Chan and Wiggins) (Coauthor: Senator Torlakson)
831	2100	—	Steinberg and Richman (Coauthor: Assembly Member Cohn) (Coauthor: Senator Chesbro)
832	2132	—	Reyes and Chan (Principal coauthors: Senators Ashburn and Florez) (Coauthors: Assembly Members Bermudez, Dymally, Houston, Koretz, Levine, Lieber, Mullin, Pacheco, and Pavley) (Coauthor: Senator Denham)
833	2149	—	Longville

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
834	2266	—	Committee on Veterans Affairs (Parra (Chair), Dutton (Vice Chair), Cohn, Kehoe, Matthews, Mullin, Nakano, Runner, and Wiggins)
835	2316	—	Chan (Coauthors: Assembly Members Calderon, Cohn, Dutra, Koretz, Lieber, Pavley, and Vargas)
836	2848	—	Keene
837	2943	—	Pavley (Coauthors: Assembly Members Jackson, Levine, and Lieber) (Coauthor: Senator Romero)
838	—	1906	Sher (Coauthor: Senator Vasconcellos) (Coauthor: Assembly Member Cohn)
839	—	177	Hollingsworth and Johnson
840	—	914	Bowen, Escutia, Kuehl, and Speier (Principal coauthor: Assembly Member Jackson) (Coauthors: Senators Alpert and Figueroa) (Coauthors: Assembly Members Bates and Garcia)
841	—	1178	Kuehl (Coauthor: Assembly Member Steinberg)
842	—	1313	Kuehl (Coauthor: Senator Romero) (Coauthor: Assembly Member Koretz)
843	—	1436	Murray (Principal coauthors: Assembly Members Correa and Leslie) (Coauthor: Senator Romero) (Coauthors: Assembly Members Aghazarian, Chavez, Shirley Horton, Jackson, Koretz, Leno, Maze, Nation, Negrete McLeod, Vargas, and Yee)
844	—	1534	Johnson
845	—	1612	Speier
846	—	1912	Ashburn (Principal coauthor: Assembly Member Reyes) (Coauthor: Senator Florez)
847	—	1276	Bowen (Coauthor: Assembly Member Firebaugh)
848	—	1456	Kuehl
849	252	—	Jackson (Principal coauthor: Senator Ashburn)
850	1367	—	Steinberg and Laird (Coauthors: Assembly Members Goldberg and Koretz)
851	2151	—	Jackson (Coauthor: Senator Ortiz)
852	2404	—	Steinberg (Principal coauthor: Assembly Member Jackson) (Principal coauthor: Senator Romero)
853	—	451	Ducheny (Principal coauthor: Senator Morrow) (Principal coauthors: Assembly Members Parra and Vargas)
854	—	512	Figueroa
855	—	659	Soto
856	—	1117	Burton (Principal coauthor: Assembly Member Nunez)
857	—	1307	Figueroa
858	—	1357	Scott
859	—	1444	Speier
860	—	1618	Battin (Principal coauthor: Assembly Member Nakanishi)
861	—	1633	Figueroa
862	—	1838	Chesbro
863	—	50	Sher (Principal coauthor: Assembly Member Jackson)
864	—	1782	Aanestad
865	—	1914	Committee on Business and Professions (Senators Figueroa (Chair), Brulte, Cedillo, Machado, Murray, and Vincent)
866	32	—	Salinas (Coauthors: Assembly Members Maldonado and Matthews)
867	135	—	Reyes and Campbell (Principal coauthor: Senator Bowen)
868	263	—	Oropeza (Coauthors: Assembly Members Firebaugh, Strickland, and Wyland) (Coauthor: Senator Alpert)
869	269	—	Mullin
870	675	—	Kehoe
871	825	—	Firebaugh (Principal coauthors: Senators Alpert and Poochigian)
872	864	—	Firebaugh
873	1009	—	Pavley (Principal coauthor: Senator Florez) (Coauthors: Assembly Members Bermudez and Chavez) (Coauthors: Senators Bowen, Kuehl, and Romero)
874	1079	—	Bermudez
875	1629	—	Frommer (Coauthors: Assembly Members Berg, McCarthy, Nunez, Richman, and Strickland) (Coauthors: Senators Burton and Johnson)
876	1857	—	Koretz
877	1950	—	Wiggins
878	2141	—	Longville
879	2176	—	Montanez
880	2277	—	Dymally
881	2430	—	Wiggins (Principal coauthor: Senator Chesbro) (Coauthor: Assembly Member Haynes) (Coauthor: Senator Machado)
882	2445	—	Canciamilla
883	2503	—	Liu
884	2572	—	Kehoe (Coauthors: Assembly Members Bermudez, Shirley Horton, Jackson, Nation, and Pavley) (Coauthors: Senators Alpert and Perata)
885	2585	—	Parra
886	2611	—	Simitian
887	2682	—	Negrete McLeod
888	2687	—	Canciamilla
889	2853	—	Laird (Principal coauthors: Assembly Members Chavez, Daucher, Hancock, La Malfa, Longville, Maze, Montanez, and Salinas)
890	2856	—	Laird (Principal coauthors: Assembly Members Chavez, Daucher, Hancock, La Malfa, Longville, Maze, Montanez, and Salinas)
891	2901	—	Pavley and Kehoe (Coauthors: Assembly Members Hancock, Jackson, Koretz, Levine, and Lieber) (Coauthors: Senators Kuehl and Romero)
892	3089	—	Committee on Governmental Organization (Jerome Horton (Chair), Plescia (Vice Chair), Bermudez, Calderon, Canciamilla, Chavez, Corbett, Dutra, Dymally, Firebaugh, Harman, Levine, Liu, Longville, Maddox, Negrete McLeod, Oropeza, Reyes, Strickland, Wiggins, and Wyland)

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
893	3095	—	Committee on Aging and Long-Term Care (Berg (Chair), Daucher, Levine, and Lowenthal)
894	1465	—	Chan (Coauthors: Assembly Members Hancock and Levine)
895	2855	—	Laird (Principal coauthors: Assembly Members Chavez, Daucher, Hancock, La Malfa, Longville, Maze, and Salinas)
896	2525	—	Committee on Education (Goldberg (Chair), Nakanishi (Vice Chair), Cohn, Diaz, Hancock, Liu, Mullin, Pavley, Reyes, and Wyland)
897	379	—	Mullin
898	2950	—	Goldberg
899	—	6	Alpert, McPherson, Scott, and Vasconcellos (Coauthors: Assembly Members Berg, Calderon, Chan, Chu, Cohn, Corbett, Daucher, Diaz, Dutra, Dymally, Firebaugh, Garcia, Goldberg, Hancock, Jerome Horton, Shirley Horton, Houston, Laird, Leno, Levine, Lieber, Liu, Longville, Maldonado, Matthews, Montanez, Mullin, Nakano, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Reyes, Ridley-Thomas, Runner, Salinas, Steinberg, Vargas, Wesson, Wiggins, Wolk, and Yee)
900	—	550	Vasconcellos, McPherson, Scott, and Alpert (Coauthors: Senators Burton, Chesbro, Ducheny, Dunn, Escutia, Karnette, Kuehl, Machado, Ortiz, Perata, and Romero) (Coauthors: Assembly Members Berg, Calderon, Chan, Chu, Cohn, Corbett, Daucher, Diaz, Dutra, Dymally, Firebaugh, Garcia, Goldberg, Hancock, Jerome Horton, Shirley Horton, Houston, Laird, Leno, Levine, Lieber, Liu, Longville, Maldonado, Matthews, Montanez, Mullin, Nakano, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Reyes, Ridley Thomas, Runner, Salinas, Steinberg, Vargas, Wesson, Wiggins, Wolk, and Yee)
901	1550	—	Daucher, Runner, Goldberg, Liu, and Dymally (Coauthors: Assembly Members Berg, Calderon, Chan, Chu, Cohn, Corbett, Diaz, Dutra, Firebaugh, Garcia, Hancock, Jerome Horton, Shirley Horton, Houston, Laird, Leno, Levine, Lieber, Longville, Maldonado, Matthews, Montanez, Mullin, Nakano, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Reyes, Ridley-Thomas, Salinas, Steinberg, Vargas, Wesson, Wiggins, Wolk, and Yee) (Coauthors: Senators Alpert, Burton, Chesbro, Ducheny, Dunn, Escutia, Karnette, Kuehl, Machado, Ortiz, Perata, Romero, Scott, Soto, and Vasconcellos)
902	3001	—	Dymally, Goldberg, Liu, Daucher, and Runner (Coauthors: Assembly Members Berg, Calderon, Chan, Chu, Cohn, Corbett, Diaz, Dutra, Firebaugh, Garcia, Hancock, Jerome Horton, Shirley Horton, Houston, Laird, Leno, Levine, Lieber, Longville, Maldonado, Matthews, Montanez, Mullin, Nakano, Negrete-McLeod, Nunez, Oropeza, Pacheco, Parra, Reyes, Ridley-Thomas, Salinas, Steinberg, Vargas, Wesson, Wiggins, Wolk, and Yee) (Coauthors: Senators Alpert, Burton, Chesbro, Ducheny, Dunn, Escutia, Karnette, Kuehl, Machado, Ortiz, Perata, Romero, Scott, Soto, and Vasconcellos)
903	2727	—	Daucher (Coauthor: Assembly Member Bermudez)
904	—	1520	Burton
905	—	18	Burton, Chesbro, and Ducheny
906	—	1462	Kuehl (Coauthor: Senator Romero) (Coauthor: Assembly Member Koretz)
907	—	926	Knight and Ashburn (Principal coauthor: Assembly Member Parra) (Coauthors: Senators Aanestad, Alpert, and Morrow) (Coauthors: Assembly Members Maze, McCarthy, Nakano, and Runner)
908	2666	—	Maldonado
909	—	136	Figueroa
910	—	311	Sher (Coauthor: Senator Alpert) (Coauthors: Assembly Members Liu and Nation)
911	—	102	Burton (Coauthors: Assembly Members Jerome Horton, Kehoe, Maddox, and Pavley)
912	2233	—	Committee on Public Employees, Retirement and Social Security (Negrete McLeod (Chair), Levine (Vice Chair), Chan, Correa, and Kehoe)
913	—	391	Florez and Escutia
914	1858	—	Steinberg (Principal coauthors: Senators Alpert and Murray) (Coauthors: Assembly Members Koretz, Leno, and Matthews)
915	—	722	McPherson
916	—	699	Sher
917	—	1215	Morrow (Coauthor: Senator Denham) (Coauthors: Assembly Members Bates, Dutton, Harman, Houston, Pacheco, and Wolk)
918	—	1227	Soto
919	—	1262	Sher
920	—	1500	Speier
921	—	1543	Figueroa
922	—	1590	Dunn
923	—	1596	Ducheny
924	—	1608	Karnette (Coauthors: Senators Romero and Vasconcellos)
925	—	1752	Battin and Denham (Coauthors: Senators Aanestad, Ackerman, Johnson, and Oller) (Coauthors: Assembly Members Bates, Bermudez, Bogh, Calderon, Cogdill, Daucher, Dutton, Garcia, Harman, Shirley Horton, La Malfa, Maze, Pacheco, and Spitzer)
926	—	1757	Denham and Battin (Coauthors: Senators Aanestad, Ackerman, Johnson, and Knight) (Coauthors: Assembly Members Bates, Cogdill, Daucher, Dutton, Garcia, Harman, Shirley Horton, La Malfa, Maze, and Spitzer)

TABLE OF LAWS ENACTED—Continued

2004

Ch. No.	A.B. No.	S.B. No.	Author
927	—	1765	Sher (Coauthors: Senators Chesbro and Kuehl) (Coauthor: Assembly Member Koretz)
928	—	1818	Hollingsworth (Principal coauthor: Senator Ducheny)
929	1071	—	Matthews
930	1199	—	Berg (Coauthor: Senator Aanestad)
931	1546	—	Simitian (Coauthors: Assembly Members Mullin and Yee)
932	1796	—	Leno (Coauthors: Assembly Members Berg, Goldberg, Hancock, Koretz, Laird, Lieber, and Steinberg) (Coauthors: Senators Romero and Vasconcellos)
933	1825	—	Reyes
934	2554	—	Pavley (Coauthors: Assembly Members Chavez and Levine) (Coauthors: Senators Karnette and Kuehl)
935	1852	—	Mullin
936	1916	—	Maddox
937	1933	—	Pacheco
938	1959	—	Chu, Frommer, Pavley, and Ridley-Thomas
939	1979	—	Wiggins
940	2693	—	Wiggins
941	2024	—	Bermudez
942	2043	—	Lowenthal
943	2121	—	Committee on Budget
944	2144	—	Ridley-Thomas
945	2248	—	Frommer (Coauthors: Assembly Members Bermudez, Chan, Shirley Horton, Jackson, Koretz, Laird, and Levine) (Coauthor: Senator Bowen)
946	2407	—	Bermudez (Coauthors: Assembly Members Chavez, Frommer, Koretz, and Pavley)
947	2580	—	Goldberg
948	2709	—	Levine
949	2861	—	Koretz (Coauthors: Assembly Members Frommer, Leslie, and Samuelian)
950	2867	—	Nunez
951	3065	—	Kehoe (Coauthor: Senator Soto)
952	3049	—	Committee on Transportation (Oropeza (Chair), Bates, Berg, Chan, Chu, Kehoe, Liu, Longville, Nakano, Parra, Pavley, and Salinas)
953	2897	—	Bogh (Principal coauthor: Senator Margett)
954	2805	—	Ridley-Thomas

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE

2004

2003–04 Regular Session

Res. Ch.	Res. No.	Author
1	SCA 1	Burton and McPherson (Principal coauthor: Assembly Member Wesson) (Coauthor: Senator Bowen)
2	ACR 141	Runner
3	ACR 143	Koretz and Leno (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, La Malfa, Laird, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Negrete McLeod, Nunez, Oropeza, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wyland, and Yee)
4	ACR 155	Jerome Horton (Coauthors: Assembly Members Dymally, Longville, Ridley-Thomas, Wesson, Aghazarian, Bates, Benoit, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Dutra, Dutton, Firebaugh, Garcia, Goldberg, Hancock, Harman, Shirley Horton, Houston, Jackson, Keene, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Lowenthal, Maldonado, Matthews, McCarthy, Mountjoy, Mullin, Nakanishi, Nakano, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Runner, Salinas, Samuelian, Spitzer, Steinberg, Strickland, Vargas, Wolk, Wyland, and Yee) (Coauthors: Senators Murray and Vincent)
5	ACR 157	Yee (Coauthors: Assembly Members Aghazarian, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, and Wyland)
6	ACR 158	Yee (Coauthors: Assembly Members Steinberg, Aghazarian, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Spitzer, Strickland, Vargas, Wesson, Wiggins, Wolk, and Wyland)
7	SJR 23	Ashburn and Knight (Coauthors: Assembly Members McCarthy, Nakano, Parra, Runner, Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, Montanez, Mullin, Nakanishi, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wiggins, Wolk, Wyland, and Yee)
8	ACR 153	Montanez (Coauthors: Assembly Members Benoit, Chan, Dymally, Garcia, Hancock, Laird, Levine, Liu, Maze, Nakano, Nation, Salinas, and Wolk) (Coauthors: Senators Alpert, Bowen, Dunn, Escutia, and Machado)
9	ACR 160	Mountjoy
10	ACR 164	Haynes (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Bogh, Campbell, Canciamilla, Chavez, Cogdill, Corbett, Correa, Cox, Daucher, Dutra, Dutton, Firebaugh, Garcia, Harman, Shirley Horton, Houston,

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res. No.	Author
		Jackson, Keene, La Suer, Leslie, Liu, Maddox, Maldonado, Matthews, Maze, McCarthy, Mountjoy, Mullin, Nakanishi, Nakano, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Runner, Salinas, Samuelian, Spitzer, Steinberg, Strickland, Wolk, and Wyland)
11	ACR 146	Chan (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Koretz, La Malfa, Laird, Leno, Levine, Lieber, Longville, Lowenthal, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Reyes, Richman, Ridley-Thomas, Runner, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wolk, Wyland, and Yee)
12	ACR 161	Oropeza (Coauthors: Assembly Members Berg, Calderon, Chan, Chavez, Chu, Cohn, Corbett, Dutra, Firebaugh, Garcia, Goldberg, Hancock, Jackson, Kehoe, Koretz, Laird, Lieber, Longville, Lowenthal, Matthews, Montanez, Mullin, Negrete McLeod, Parra, Pavley, Reyes, Ridley-Thomas, Steinberg, Wiggins, Wolk, Aghazarian, Bates, Benoit, Bermudez, Bogh, Cogdill, Correa, Cox, Daucher, Diaz, Dymally, Frommer, Harman, Jerome Horton, Shirley Horton, Houston, Keene, La Malfa, Leno, Levine, Maldonado, Maze, McCarthy, Mountjoy, Nakano, Nation, Nunez, Pacheco, Richman, Runner, Samuelian, Simitian, Spitzer, Strickland, Vargas, Wesson, Wyland, and Yee) (Coauthors: Senators Alpert, Ducheny, Karnette, and Romero)
13	ACR 165	Jerome Horton (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Harman, Haynes, Shirley Horton, Houston, Jackson, Keene, Koretz, La Malfa, Laird, Leno, Levine, Lieber, Longville, Lowenthal, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Reyes, Richman, Ridley-Thomas, Runner, Samuelian, Simitian, Spitzer, Steinberg, Vargas, Wesson, Wolk, Wyland, and Yee) (Coauthors: Senators Murray and Vincent)
14	SCR 56	Figueroa
15	SCR 57	Margett, Alpert, Bowen, Kuehl, Scott, Speier, and Vincent (Coauthors: Assembly Members Bates, Benoit, Chavez, Cohn, Cox, Dutton, Garcia, Houston, La Malfa, Maze, Mountjoy, Nakanishi, Pacheco, Pavley, Plescia, Runner, and Yee)
16	SJR 17	Morrow (Principal coauthor: Assembly Member Parra) (Coauthors: Senators Ashburn, Battin, Bowen, Chesbro, Denham, Ducheny, Dunn, Hollingsworth, Knight, Machado, Margett, McPherson, and Soto) (Coauthors: Assembly Members Bates, Benoit, Chavez, Dutton, Garcia, Harman, La Suer, Levine, Maddox, Maze, McCarthy, Mountjoy, Mullin, Pacheco, Runner, Spitzer, and Wyland)
17	ACR 173	McCarthy
18	SCR 52	Alpert (Coauthors: Assembly Members Aghazarian, Benoit, Berg, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Cogdill, Corbett, Correa, Cox, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Runner, Salinas, Samuelian, Spitzer, Steinberg, Strickland, Vargas, Wolk, Wyland, and Yee)
19	ACR 61	Koretz
20	ACR 159	Lieber
21	ACR 176	Bogh
22	ACR 181	McCarthy (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Bogh, Campbell, Canciamilla, Chavez, Cogdill, Cox, Daucher, Dutton, Garcia, Harman, Haynes, Shirley Horton, Houston, Keene, La Suer, Laird, Leslie, Lieber, Maddox, Maldonado, Matthews, Maze, Mountjoy, Nakanishi, Pacheco, Parra, Pavley, Plescia, Richman, Runner, Samuelian, Spitzer, Strickland, and Wyland)
23	ACR 186	Frommer (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Dutra, Dymally, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Koretz, La Malfa,

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res. No.	Author
		Laird, Leslie, Levine, Lieber, Longville, Lowenthal, Maldonado, Matthews, Maze, McCarthy, Montanez, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Vargas, Wesson, Wolk, Wyland, and Yee)
24	ACR 190	McCarthy (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Campbell, Canciamilla, Chan, Chavez, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wyland, and Yee)
25	ACR 192	Mullin and Corbett (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Campbell, Canciamilla, Chan, Chavez, Cogdill, Cohn, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wyland, and Yee)
26	ACR 172	Nakano, Shirley Horton, and Nakanishi (Principal coauthors: Assembly Members Chan, Chu, Liu, and Yee) (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chavez, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dymally, Firebaugh, Frommer, Garcia, Hancock, Harman, Haynes, Jerome Horton, Houston, Jackson, Keene, Koretz, La Malfa, Laird, Leno, Leslie, Levine, Lieber, Lowenthal, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Negrete McLeod, Nunez, Oropeza, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, and Wyland) (Coauthor: Senator Machado)
27	ACR 174	Kehoe (Principal coauthor: Senator Scott) (Coauthors: Assembly Members Bates, Cohn, Diaz, Frommer, Liu, Nakano, Pavley, and Vargas) (Coauthors: Senators Alpert and Bowen)
28	SCR 58	McPherson
29	SCR 42	Soto (Coauthors: Senators Figueroa and Ortiz)
30	ACR 196	Firebaugh (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Chan, Chu, Cohn, Corbett, Correa, Daucher, Diaz, Dutra, Dutton, Dymally, Frommer, Garcia, Goldberg, Hancock, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, Laird, Leno, Leslie, Levine, Lieber, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, and Yee)
31	SJR 15	Alarcon (Coauthor: Assembly Member Lieber)
32	SCR 54	Denham and Ducheny
33	SCR 55	Alpert
34	ACR 194	Chu (Coauthors: Assembly Members Bates, Berg, Chan, Cohn, Corbett, Daucher, Garcia, Goldberg, Hancock, Jackson, Kehoe, Lieber, Liu, Matthews, Montanez, Oropeza, Pavley, Reyes, Runner, Wolk, Aghazarian, Benoit, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chavez, Cogdill, Correa, Cox, Dutra, Dutton, Dymally, Frommer, Harman, Jerome Horton, Shirley Horton, Houston, Keene, Koretz, La Suer, Laird, Leno, Levine, Longville, Lowenthal, Maddox, Maldonado, Maze, McCarthy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Plescia, Richman, Ridley-Thomas, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wiggins, Wyland, and Yee) (Coauthors: Senators Alpert, Bowen, Ducheny, Escutia, Figueroa, Karnette, Kuehl, Ortiz, Romero, and Soto)
35	ACR 201	Pavley (Coauthors: Assembly Members Aghazarian, Bates, Berg, Bermudez, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cohn, Corbett, Diaz, Dutra, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res. No.	Author
		Horton, Houston, Jackson, Keene, Kehoe, Koretz, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Montanez, Mountjoy, Mullin, Nakano, Nation, Negrete McLeod, Oropeza, Plescia, Reyes, Richman, Salinas, Simitian, Spitzer, Steinberg, Wesson, Wiggins, Wolk, and Yee)
36	ACR 206	Nakano (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Chan, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Dutra, Dutton, Dymally, Frommer, Goldberg, Hancock, Harman, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wiggins, Wolk, Wyland, and Yee)
37	AJR 36	Dutton and Parra
38	AJR 66	Lieber (Coauthors: Assembly Members Chavez, Laird, Liu, Pavley, Salinas, Vargas, Wiggins, Aghazarian, Bates, Berg, Bermudez, Calderon, Canciamilla, Chan, Chu, Cohn, Corbett, Correa, Daucher, Dutra, Dutton, Dymally, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Jackson, Kehoe, Koretz, Leno, Levine, Longville, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Montanez, Mullin, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Parra, Plescia, Reyes, Richman, Ridley-Thomas, Simitian, Spitzer, Steinberg, Wolk, Wyland, and Yee) (Coauthors: Senators Alpert, Bowen, Figueroa, Kuehl, Machado, and Romero)
39	ACR 115	Canciamilla (Coauthor: Senator Torlakson)
40	ACR 121	La Suer (Coauthor: Senator Hollingsworth)
41	ACR 131	Cox (Principal coauthor: Assembly Member Steinberg) (Coauthor: Assembly Member Dymally)
42	ACR 135	Runner (Coauthor: Senator Knight)
43	ACR 139	Dymally (Principal coauthor: Senator Vincent) (Coauthor: Assembly Member Nunez) (Coauthor: Senator Cedillo)
44	ACR 147	Cohn (Coauthors: Assembly Members Bates, Benoit, Bermudez, Canciamilla, Chan, Chavez, Corbett, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Frommer, Hancock, Koretz, La Malfa, Laird, Levine, Lieber, Liu, Lowenthal, Maldonado, Maze, Montanez, Mountjoy, Mullin, Nation, Pavley, Plescia, Richman, Runner, Salinas, Samuelian, Spitzer, Steinberg, Strickland, Vargas, Aghazarian, Berg, Bogh, Calderon, Campbell, Chu, Cogdill, Firebaugh, Garcia, Goldberg, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, La Suer, Leno, Leslie, Longville, Maddox, Nakanishi, Nakano, Negrete McLeod, Oropeza, Pacheco, Reyes, Simitian, Wesson, Wiggins, Wolk, Wyland, and Yee)
45	ACR 166	Nation
46	ACR 169	Koretz
47	ACR 199	Liu (Coauthors: Assembly Members Aghazarian, Bates, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Kehoe, Koretz, La Suer, Laird, Leno, Levine, Lieber, Longville, Lowenthal, Maddox, Maldonado, Maze, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Oropeza, Pacheco, Pavley, Plescia, Reyes, Richman, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Wesson, Wolk, Wyland, and Yee)
48	ACR 200	Corbett
49	ACR 202	Levine (Coauthors: Assembly Members Aghazarian, Bates, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Maze, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Oropeza, Pacheco, Pavley, Plescia, Reyes, Richman, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Wiggins, Wolk, Wyland, and Yee)
50	AJR 57	Jackson and Chan (Principal coauthors: Assembly Members Liu and Yee) (Principal coauthor: Senator Karnette) (Coauthors: Assembly Members Berg, Bermudez, Calderon, Canciamilla, Chavez, Chu, Cohn, Corbett, Correa, Daucher, Diaz, Dutra, Dymally, Firebaugh, Frommer, Goldberg, Hancock, Jerome Horton, Kehoe,

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res.	No.	Author
			Koretz, Laird, Leno, Levine, Lieber, Longville, Lowenthal, Matthews, Montanez, Mullin, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Parra, Pavley, Reyes, Richman, Ridley-Thomas, Salinas, Simitian, Steinberg, Vargas, Wesson, Wiggins, and Wolk) (Coauthors: Senators Bowen, Escutia, Figueroa, Kuehl, Machado, Romero, Speier, and Torlakson)
51	SCR	35	Florez
52	SCR	45	Chesbro
53	SCR	46	Ashburn
54	SCR	66	McPherson (Coauthors: Senators Alpert, Bowen, Ducheny, Romero, Scott, and Vasconcellos) (Coauthors: Assembly Members Bates, Benoit, Bermudez, Jackson, Kehoe, Laird, Lieber, Maze, Pacheco, Plescia, and Runner)
55	SCR	73	Battin
56	ACR	191	Leno
57	ACR	212	Parra and Matthews (Principal coauthor: Assembly Member Correa) (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Lowenthal, Maddox, Maldonado, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Negrete McLeod, Oropeza, Pacheco, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
58	ACR	214	Chan (Coauthors: Assembly Members Aghazarian, Benoit, Berg, Bermudez, Bogh, Campbell, Canciamilla, Chavez, Chu, Cogdill, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Keene, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
59	ACR	215	Yee (Coauthors: Assembly Members Aghazarian, Benoit, Berg, Bermudez, Bogh, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Keene, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, and Wyland)
60	ACR	104	Pavley (Coauthors: Assembly Members Cohn, Daucher, Goldberg, Jackson, Liu, Montanez, Mullin, Nunez, Plescia, Salinas, and Steinberg) (Coauthor: Senator Karnette)
61	SCR	60	Battin
62	SCR	62	Battin
63	SCR	74	Torlakson (Principal coauthor: Assembly Member Jackson) (Coauthors: Senators Aanestad, Denham, Escutia, Karnette, Kuehl, Ortiz, Romero, and Vasconcellos) (Coauthors: Assembly Members Benoit, Chan, Chavez, Cox, Dutra, Frommer, Hancock, Houston, Leno, Maze, Mullin, Nakano, Pavley, Samuelian, Strickland, Aghazarian, Bates, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chu, Cogdill, Cohn, Corbett, Correa, Daucher, Diaz, Dutton, Dymally, Firebaugh, Garcia, Goldberg, Harman, Jerome Horton, Shirley Horton, Keene, Kehoe, Koretz, La Suer, Laird, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Matthews, McCarthy, Montanez, Mountjoy, Nakanishi, Nation, Negrete McLeod, Nunez, Oropeza, Parra, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Simitian, Spitzer, Steinberg, Wesson, Wolk, Wyland, and Yee)
64	SCR	75	Karnette (Coauthor: Assembly Member Lowenthal)
65	ACR	182	Samuelian (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Levine, Lieber, Liu,

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res. No.	Author
		Longville, Lowenthal, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Parra, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Simitian, Spitzer, Steinberg, Strickland, Wesson, Wolk, Wyland, and Yee)
66	ACR 188	Maze (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
67	ACR 218	Houston (Principal coauthor: Assembly Member Pavley) (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Oropeza, Pacheco, Parra, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
68	AJR 41	Yee
69	ACR 50	Negrete McLeod
70	ACR 205	Daucher (Coauthors: Assembly Members Bates, Benoit, Cox, Dymally, Frommer, Garcia, Houston, La Malfa, Maze, Pacheco, Pavley, Samuelian, Spitzer, and Steinberg) (Coauthors: Senators Aanestad, Ackerman, Bowen, Denham, Kuehl, Machado, McPherson, Romero, and Vasconcellos)
71	ACR 207	Chan (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
72	ACR 208	Pavley (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Calderon, Campbell, Canciamilla, Chavez, Chu, Cogdill, Cohn, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Longville, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Plescia, Reyes, Ridley-Thomas, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
73	ACR 210	Vargas
74	ACR 220	Correa (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chavez, Cogdill, Cohn, Corbett, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Leno, Levine, Lieber, Liu, Lowenthal, Maddox, Matthews, Maze, McCarthy, Mountjoy, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Parra, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Spitzer, Steinberg, Strickland, Wesson, Wolk, Wyland, and Yee)
75	ACR 227	Chu, Chan, Shirley Horton, Liu, Nakanishi, Nakano, and Yee (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chavez, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie,

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res. No.	Author
		Levine, Lieber, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Mountjoy, Mullin, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, and Wyland) (Coauthor: Senator Machado)
76	ACR 140	Wesson (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wiggins, Wolk, Wyland, and Yee)
77	ACR 203	Garcia (Coauthors: Assembly Members Benoit Bogh, Aghazarian, Bates, Berg, Bermudez, Calderon, Campbell, Canciamilla, Chavez, Chu, Cogdill, Cohn, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Firebaugh, Frommer, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, La Suer, Laird, Leno, Leslie, Levine, Lieber, Longville, Lowenthal, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Plescia, Reyes, Ridley-Thomas, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee) (Coauthor: Senator Battin)
78	ACR 211	Mountjoy
79	ACR 217	Mountjoy (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Bermudez, Bogh, Campbell, Cogdill, Cox, Dutton, Frommer, Garcia, Haynes, Jerome Horton, Shirley Horton, Houston, Keene, La Suer, Leslie, Maddox, Maldonado, Maze, McCarthy, Pacheco, Ridley-Thomas, Runner, Samuelian, Strickland, Vargas, Wyland, Berg, Calderon, Canciamilla, Chan, Chavez, Cohn, Corbett, Correa, Daucher, Diaz, Dutra, Firebaugh, Harman, Koretz, Matthews, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Parra, Pavley, Plescia, Reyes, Richman, Salinas, Spitzer, Wolk, and Yee) (Coauthors: Senators Ashburn, Denham, Hollingsworth, and Romero)
80	ACR 219	Houston (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
81	ACR 223	Cohn (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
82	SCR 63	Morrow
83	SCR 71	Morrow
84	SCR 79	Scott, Escutia, Karnette, Ortiz, Soto, and Vasconcellos (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu,

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res. No.	Author
		Longville, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
85	ACR 222	Haynes and Wyland (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, and Yee)
86	ACR 226	Berg
87	ACR 229	Kehoe (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Koretz, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
88	ACR 230	Garcia (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
89	ACR 232	Shirley Horton (Principal coauthor: Assembly Member Maze) (Coauthors: Assembly Members Benoit, Bermudez, Daucher, Garcia, Aghazarian, Bates, Berg, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee) (Coauthor: Senator Oller)
90	ACR 233	Parra (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
91	SCR 82	Scott
92	AJR 79	Chu (Coauthors: Assembly Members Aghazarian, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chavez, Cohn, Corbett, Correa, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Kehoe, Koretz, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maldonado, Matthews, Montanez,

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res.	No.	Author
			Mullin, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Parra, Pavley, Plescia, Reyes, Ridley-Thomas, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
93	AJR	64	Chu (Coauthors: Assembly Members Bermudez, Cox, Diaz, Dymally, Frommer, Garcia, Hancock, Lieber, Liu, Longville, Maddox, Pavley, Salinas, Vargas, Wolk, Aghazarian, Bates, Benoit, Berg, Bogh, Calderon, Campbell, Chan, Chavez, Cogdill, Cohn, Corbett, Correa, Daucher, Dutra, Dutton, Firebaugh, Goldberg, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lowenthal, Maldonado, Maze, McCarthy, Montanez, Mountjoy, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Reyes, Richman, Ridley-Thomas, Runner, Samuelian, Spitzer, Steinberg, Strickland, Wesson, and Yee)
94	SJR	16	Morrow (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Frommer, Garcia, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leslie, Levine, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
95	SJR	28	Torlakson, McClintock, and Scott
96	AJR	33	Dymally (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Firebaugh, Frommer, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, Laird, Leno, Levine, Lieber, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
97	AJR	54	Pacheco
98	AJR	70	Garcia
99	AJR	50	Pavley (Coauthors: Assembly Members Campbell, Dutra, Frommer, Shirley Horton, Jackson, Levine, McCarthy, Nakano, Nation, Simitian, Strickland, and Wolk)
100	AJR	65	Bogh (Principal coauthor: Senator Battin) (Coauthors: Assembly Members Chavez, Frommer, Salinas, Wiggins, Aghazarian, Bates, Benoit, Bermudez, Calderon, Canciamilla, Chan, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Garcia, Goldberg, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Leslie, Levine, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Mountjoy, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Samuelian, Spitzer, Steinberg, Strickland, Vargas, Wolk, Wyland, and Yee)
101	AJR	68	Parra
102	SCR	83	Perata (Coauthor: Assembly Member Chan)
103	SCA	18	Johnson and Alpert
104	AJR	69	Matthews and Maldonado (Principal coauthors: Senators Machado and Poochigian)
105	ACR	237	Cogdill (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chavez, Cohn, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Garcia, Goldberg, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
106	SCR	81	Torlakson, Escutia, Karnette, and Ortiz (Coauthors: Assembly Members Hancock and Jackson)
107	SJR	20	Florez (Coauthor: Assembly Member Wiggins)
108	ACR	168	Maze (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell,

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res.	No.	Author
			Canciamilla, Chavez, Chu, Cogdill, Cohn, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Hancock, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Longville, Lowenthal, Maldonado, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Plescia, Reyes, Ridley-Thomas, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
109	ACR	178	Mountjoy and Koretz (Coauthors: Assembly Members Bates, Benoit, Cogdill, Daucher, Dutton, Haynes, Kehoe, La Suer, Maze, Pacheco, Plescia, and Runner)
110	ACR	221	Bermudez
111	AJR	61	Ridley-Thomas, Pavley, Chu, and Frommer
112	AJR	62	Ridley-Thomas, Chu, Frommer, and Pavley
113	AJR	74	Pavley (Coauthors: Assembly Members Aghazarian, Berg, Bermudez, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cohn, Corbett, Correa, Daucher, Diaz, Dutra, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Kehoe, Koretz, Laird, Leno, Levine, Lieber, Liu, Longville, Lowenthal, Maldonado, Matthews, Montanez, Mullin, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Reyes, Richman, Ridley-Thomas, Salinas, Samuelian, Simitian, Steinberg, Vargas, Wesson, Wiggins, Wolk, and Yee)
114	SCR	53	Hollingsworth, Alpert, Burton, Ducheny, and Morrow (Principal coauthors: Assembly Members Bates, Kehoe, La Suer, Nation, Plescia, and Vargas)
115	SCR	61	Battin
116	SCR	64	Ducheny
117	SCR	50	Ashburn
118	SCR	67	McPherson
119	SCR	68	Chesbro
120	SCR	69	Chesbro
121	SCR	70	Ducheny and Hollingsworth
122	ACR	142	Chavez (Coauthors: Assembly Members Chu, Liu, Mountjoy, Pacheco, and Richman) (Coauthor: Senator Margett)
123	ACR	162	Kehoe (Coauthors: Assembly Members Bates, Shirley Horton, La Suer, Plescia, Vargas, and Wyland) (Coauthors: Senators Alpert, Ducheny, Hollingsworth, and Morrow)
124	ACR	171	Maze (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell,
			Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Parra, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Wesson, Wolk, Wyland, and Yee)
125	ACR	175	Samuelian
126	ACR	179	Leslie
127	ACR	180	Bogh
128	ACR	185	McCarthy
129	ACR	244	Koretz (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Plescia, Reyes, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
130	AJR	53	Reyes and Cohn (Principal coauthor: Senator Cedillo) (Coauthors: Assembly Members Bates, Bermudez, Chavez, Daucher, Diaz, Dymally, Garcia, Hancock, Shirley Horton, Houston, Laird, Lieber, Liu, Maze, Montanez, Nakano, Nation, Pavley, and Wolk) (Coauthors: Senators Alpert, Ducheny, Escutia, Karnette, Kuehl, Machado, Ortiz, Scott, Vasconcellos, and Vincent)
131	AJR	72	Frommer (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Matthews, Maze, McCarthy, Mountjoy, Nakanishi, Nakano, Nation, Negrete McLeod,

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res.	No.	Author
			Nunez, Oropeza, Parra, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Wesson, Wolk, Wyland, and Yee)
132	AJR	83	Daucher and Goldberg (Principal coauthor: Senator Speier)
133	SCA	4	Torlakson
134	ACR	195	Yee and Runner (Coauthors: Assembly Members Bates, Chavez, Garcia, Lieber, Nakano, Negrete McLeod, Pavley, Vargas, and Wiggins)
135	ACR	228	Chavez (Coauthors: Assembly Members Houston, La Malfa, Pavley, Aghazarian, Bates, Benoit, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chu, Cogdill, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Hancock, Harman, Jerome Horton, Shirley Horton, Jackson, Keene, Kehoe, Koretz, Laird, Leno, Leslie, Levine, Lieber, Liu, Lowenthal, Maddox, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Plescia, Reyes, Richman, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wiggins, Wolk, Wyland, and Yee)
136	AJR	55	Reyes (Coauthors: Assembly Members Bermudez, Diaz, Dymally, Laird, Lieber, Montanez, and Pavley) (Coauthors: Senators Alpert, Escutia, and Kuehl)
137	ACR	133	Bates (Coauthor: Senator Morrow)
138	SCR	65	Speier
139	SJR	24	Ortiz (Coauthor: Assembly Member Koretz)
140	SJR	29	Kuehl (Coauthors: Senators Alpert, Escutia, Ortiz, Romero, and Torlakson) (Coauthors: Assembly Members Chavez, Pavley, Berg, Bermudez, Chan, Chu, Cohn, Corbett, Daucher, Dutra, Dymally, Firebaugh, Frommer, Goldberg, Hancock, Shirley Horton, Jackson, Kehoe, Koretz, Laird, Leno, Levine, Lieber, Liu, Longville, Lowenthal, Montanez, Mullin, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Reyes, Salinas, Simitian, Steinberg, Vargas, Wolk, and Yee)
141	ACR	116	Yee
142	ACR	189	La Malfa
143	ACR	216	Ridley-Thomas
144	ACR	240	Kehoe (Principal coauthors: Assembly Members Dutton and La Suer) (Principal coauthors: Senators Alpert, Hollingsworth, and Soto) (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dymally, Firebaugh, Frommer, Garcia, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Koretz, La Malfa, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Mountjoy, Mullin, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
145	AJR	44	Koretz (Coauthors: Assembly Members Benoit, Bogh, Calderon, Chavez, Cohn, Correa, Diaz, Dutra, Dutton, Frommer, Goldberg, Hancock, Jerome Horton, Laird, Levine, Lieber, Lowenthal, Mountjoy, Mullin, Nakano, Nunez, Pavley, Richman, Ridley-Thomas, Steinberg, Vargas, Wolk, Wyland, Yee, Aghazarian, Bates, Berg, Bermudez, Campbell, Canciamilla, Chan, Chu, Cogdill, Corbett, Cox, Daucher, Dymally, Garcia, Harman, Shirley Horton, Houston, Jackson, Keene, Kehoe, La Suer, Leno, Leslie, Liu, Longville, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Nakanishi, Nation, Negrete McLeod, Oropeza, Pacheco, Parra, Plescia, Reyes, Runner, Salinas, Samuelian, Simitian, Spitzer, Strickland, Wesson, and Wiggins) (Coauthors: Senators Bowen and Ortiz)
146	AJR	71	Wolk (Coauthors: Assembly Members Dutton, Kehoe, Matthews, Mountjoy, Nakano, Parra, Runner, Salinas, Wiggins, Wyland, Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Koretz, La Suer, Laird, Leno, Leslie, Levine, Lieber, Longville, Lowenthal, Maddox, Maldonado, Maze, McCarthy, Mullin, Nakanishi, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Samuelian, Simitian, Spitzer, Strickland, Vargas, and Yee)
147	AJR	87	Goldberg (Coauthors: Assembly Members Berg, Bermudez, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Corbett, Correa, Diaz, Dutra, Dymally, Frommer, Hancock, Jerome Horton, Jackson, Kehoe, Koretz, Laird, Leno, Levine, Liu, Longville, Lowenthal,

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res. No.	Author
		Matthews, Montanez, Mullin, Nakano, Nation, Negrete McLeod, Nunez, Parra, Reyes, Ridley-Thomas, Salinas, Simitian, Vargas, Wesson, and Yee)
148 ACR	145	Nakano
149 ACR	151	Cox
150 ACR	156	Frommer and Richman (Coauthor: Senator Scott)
151 ACR	163	Spitzer (Coauthors: Assembly Members Benoit, Bogh, Dutton, Garcia, and Haynes) (Coauthors: Senators Battin, Brulte, Ducheny, and Hollingsworth)
152 ACR	177	Maze (Coauthors: Assembly Members Garcia, Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, Laird, La Suer, Leno, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Matthews, McCarthy, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Parra, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Wesson, Wolk, Wyland, and Yee) (Coauthors: Senators Aanestad and Ducheny)
153 AJR	63	Maze
154 AJR	86	Lieber (Principal coauthors: Assembly Members Harman, Liu, Maldonado, and Runner) (Principal coauthors: Senators Ashburn, Hollingsworth, and Scott) (Coauthors: Assembly Members Benoit, Bermudez, Chavez, Levine, and Mountjoy)
155 SCR	87	Torlakson (Coauthor: Assembly Member Firebaugh)
156 SCR	88	Ashburn
157 SJR	2	Figueroa
158 ACR	167	Richman (Coauthors: Assembly Members Benoit, Cox, Daucher, Frommer, Garcia, Haynes, Houston, Jackson, Koretz, La Malfa, Laird, Leno, Levine, Lieber, Liu, Maze, Montanez, Mullin, Nakanishi, Pacheco, Pavley, Plescia, Runner, Samuelian, Spitzer, Strickland, Vargas, and Yee) (Coauthors: Senators Alpert, Bowen, Denham, Johnson, McClintock, Oller, and Speier)
159 ACR	213	Wiggins (Coauthors: Assembly Members Aghazarian, Bates, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Kehoe, Koretz, Laird, Leno, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado,
		Matthews, Maze, Montanez, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wolk, and Yee)
160 AJR	14	Koretz
161 AJR	47	Frommer (Coauthors: Assembly Members Chan, Diaz, Levine, Mullin, Nation, Nunez, Salinas, Yee, Aghazarian, Benoit, Berg, Bermudez, Calderon, Chu, Cohn, Corbett, Correa, Daucher, Dutra, Dymally, Firebaugh, Garcia, Goldberg, Hancock, Shirley Horton, Kehoe, Koretz, Laird, Leno, Lieber, Lowenthal, Maldonado, Matthews, Montanez, Nakanishi, Nakano, Negrete McLeod, Oropeza, Parra, Plescia, Reyes, Richman, Ridley-Thomas, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, and Wolk) (Coauthors: Senators Bowen, Cedillo, Dunn, Kuehl, Romero, and Speier)
162 AJR	73	Simitian (Principal coauthors: Assembly Members Aghazarian, Frommer, Liu, Samuelian, Benoit, Berg, Bermudez, Bogh, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Garcia, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Keene, Koretz, La Suer, Laird, Leno, Leslie, Levine, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Pacheco, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Runner, Salinas, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wyland, and Yee) (Principal coauthors: Senators Poochigian and Scott)
163 AJR	91	Chan (Principal coauthor: Senator Alarcon) (Coauthors: Assembly Members Aghazarian, Berg, Bermudez, Calderon, Canciamilla, Chavez, Chu, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Jerome Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leno, Levine, Lieber, Liu, Longville, Lowenthal, Matthews, Montanez, Mountjoy, Mullin, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Plescia, Reyes, Ridley-Thomas, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, and Yee)

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res. No.	Author
164	SCR 77	Vasconcellos, McPherson, Poochigian, and Romero
165	SCR 78	Cedillo (Coauthors: Assembly Members Benoit, La Suer, Maddox, and Nunez)
166	SCR 84	Denham
167	SCR 86	Figueroa, Alpert, Chesbro, Ducheny, Escutia, Karnette, Kuehl, Ortiz, Romero, Soto, and Speier (Coauthors: Assembly Members Bates, Berg, Chan, Chu, Cohn, Corbett, Daucher, Garcia, Goldberg, Hancock, Shirley Horton, Jackson, Kehoe, Lieber, Liu, Matthews, Montanez, Negrete McLeod, Oropeza, Parra, Pavley, Reyes, Wiggins, and Wolk)
168	SJR 25	Ortiz, Alarcon, Chesbro, Escutia, Figueroa, Florez, Kuehl, Romero, Vasconcellos, and Vincent (Principal coauthor: Assembly Member Cohn)
169	SJR 30	Torlakson and Brulte
170	ACR 193	Liu (Coauthors: Assembly Members Matthews, Negrete McLeod, Pavley, Aghazarian, Bates, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Corbett, Correa, Daucher, Diaz, Dutra, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Jackson, Keene, Kehoe, Koretz, Laird, Leno, Levine, Lieber, Longville, Lowenthal, Maldonado, Montanez, Mountjoy, Mullin, Nakano, Nunez, Oropeza, Pacheco, Parra, Plescia, Reyes, Richman, Ridley-Thomas, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee) (Coauthors: Senators Alpert, Ducheny, Kuehl, Romero, and Scott)
171	ACR 242	Goldberg (Coauthors: Assembly Members Berg, Calderon, Chan, Chavez, Chu, Cohn, Corbett, Correa, Diaz, Dutra, Dymally, Firebaugh, Hancock, Jackson, Kehoe, Koretz, Laird, Leno, Levine, Lieber, Longville, Lowenthal, Mullin, Nation, Negrete McLeod, Nunez, Oropeza, Pavley, Reyes, Salinas, Steinberg, Vargas, Wesson, Wiggins, Wolk, and Yee)
172	AJR 85	Leno, Goldberg, Kehoe, and Laird (Principal coauthor: Senator Kuehl) (Coauthors: Assembly Members Berg, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Corbett, Diaz, Dutra, Dymally, Firebaugh, Frommer, Hancock, Jerome Horton, Jackson, Koretz, Levine, Lieber, Liu, Longville, Lowenthal, Montanez, Mullin, Nakano, Nation, Nunez, Oropeza, Parra, Pavley, Reyes, Ridley-Thomas, Salinas, Simitian, Steinberg, Vargas, Wesson, Wiggins, Wolk, and Yee) (Coauthors: Senators Alpert, Bowen, Cedillo, Escutia, Figueroa, Karnette, Romero, Sher, and Vasconcellos)
173	ACR 148	Cohn
174	ACR 149	Cohn
175	ACR 152	Diaz and Lieber (Coauthors: Assembly Members Cohn, Laird, Longville, and Salinas) (Coauthors: Senators Murray, Sher, and Vasconcellos)
176	ACR 224	Cohn
177	ACR 225	Cohn
178	ACR 251	Wolk (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wyland, and Yee)
179	ACR 253	Steinberg
180	ACR 257	Bogh
181	ACR 258	Negrete McLeod
182	AJR 88	Nation (Coauthors: Assembly Members Goldberg, Lieber, Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Frommer, Hancock, Harman, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Suer, Laird, Leslie, Levine, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Negrete McLeod, Nunez, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Salinas, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
183	ACR 234	Firebaugh (Coauthors: Assembly Members Leno, Nakano, Bermudez, Calderon, Chan, Chavez, Chu, Cohn, Corbett, Daucher, Diaz, Dutra, Dymally, Frommer, Goldberg, Hancock, Jerome Horton, Shirley Horton, Jackson, Kehoe, Koretz, Laird, Levine, Lieber, Liu, Longville, Lowenthal, Matthews, Montanez, Mullin, Nation, Negrete McLeod, Nunez, Oropeza, Reyes,

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

2004

Res. Ch.	Res.	No.	Author
			Ridley-Thomas, Salinas, Simitian, Steinberg, Vargas, Wesson, Wiggins, Wolk, and Yee)
184	SCR	91	Figueroa
185	SCR	93	Torlakson
186	SCR	94	Ortiz and Perata
187	SJR	31	McPherson
188	AJR	56	Frommer and Koretz (Coauthors: Assembly Members Chan, Chavez, Goldberg, Hancock, Jackson, Leno, Lieber, Mullin, Nation, Ridley-Thomas, Vargas, Berg, Bermudez, Calderon, Chu, Cohn, Corbett, Daucher, Diaz, Dutra, Dymally, Firebaugh, Shirley Horton, Kehoe, Laird, Levine, Liu, Lowenthal, Matthews, Montanez, Nunez, Oropeza, Parra, Reyes, Salinas, Simitian, Steinberg, Wesson, Wolk, and Yee) (Coauthors: Senators Alpert, Romero, and Scott)
189	ACR	67	Bermudez
190	ACR	252	Mullin
191	AJR	45	Mountjoy and La Suer (Coauthors: Assembly Members Chavez, Aghazarian, Bates, Benoit, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Garcia, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, La Malfa, Leslie, Maddox, Maldonado, Matthews, Maze, McCarthy, Mullin, Nakanishi, Nunez, Pacheco, Plescia, Runner, Salinas, Samuelian, Spitzer, Strickland, Vargas, Wesson, Wyland, and Yee)
192	AJR	60	Lieber and Leno (Coauthors: Senators Escutia, Figueroa, and Kuehl) (Coauthors: Assembly Members Berg, Chan, Chavez, Chu, Cohn, Corbett, Correa, Diaz, Dutra, Dymally, Firebaugh, Goldberg, Hancock, Jackson, Kehoe, Koretz, Laird, Levine, Liu, Longville, Lowenthal, Montanez, Nation, Nunez, Oropeza, Pavley, Ridley-Thomas, Simitian, Steinberg, Vargas, Wesson, Wiggins, and Yee)
193	AJR	96	Liu (Principal coauthor: Senator Figueroa) (Coauthors: Assembly Members Bates, Berg, Chu, Corbett, Daucher, Goldberg, Hancock, Jackson, Kehoe, Lieber, Matthews, Montanez, Pavley, and Wiggins) (Coauthors: Senators Ducheny, Escutia, Karnette, Kuehl, Ortiz, and Speier)
194	ACR	209	Parra
195	ACR	248	Mountjoy (Coauthor: Assembly Member Dutton)
196	ACR	235	Vargas (Coauthor: Senator Morrow)
197	ACR	236	Correa (Coauthors: Assembly Members Harman, Maddox, Pacheco, Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Negrete McLeod, Nunez, Oropeza, Parra, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
198	ACR	243	Samuelian (Coauthors: Assembly Members Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, and Yee)
199	ACR	254	Firebaugh (Coauthors: Assembly Members Chavez, Correa, Diaz, Montanez, Negrete McLeod, Nunez, Pacheco, Reyes, Salinas, Berg, Bermudez, Calderon, Chan, Chu, Cohn, Corbett, Dutra, Dymally, Frommer, Garcia, Goldberg, Hancock, Jerome Horton, Shirley Horton, Jackson, Kehoe, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Matthews, Nakano, Oropeza, Parra, Ridley-Thomas, Simitian, Steinberg, Vargas, Wesson, Wiggins, Wolk, and Yee) (Coauthors: Senators Alarcon, Cedillo, Florez, Romero, and Soto)
200	ACR	255	Berg and Levine
201	ACR	238	Negrete McLeod

TABLE OF LAWS ENACTED

2004

2003–04 Third Extraordinary Session

Ch. No.	A.B. No.	S.B. No.	Author
None.			

Ch. No.	A.B. No.	S.B. No.	Author

TABLE OF RESOLUTION ADOPTED BY THE LEGISLATURE

2004

2003–04 Third Extraordinary Session

Res. Ch.	Res. No.	Author	Res. Ch.	Res. No.	Author
1	SCR 2	Burton			

TABLE OF LAWS ENACTED

2004

2003–04 Fourth Extraordinary Session

Ch. No.	A.B. No.	S.B. No.	Author
1	13	—	Firebaugh
2	—	2	Speier (Principal coauthors: Assembly Members Koretz and Spitzer)

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE

2004

2003–04 Fourth Extraordinary Session

Res. Ch.	Res. No.	Author	Res. Ch.	Res. No.	Author

None.

TABLE OF LAWS ENACTED

2004

2003–04 Fifth Extraordinary Session

Ch. No.	A.B. No.	S.B. No.	Author
None.			

Ch. No.	A.B. No.	S.B. No.	Author

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE

2004

2003 – 04 Fifth Extraordinary Session

Res. Ch.	Res. No.	Author	Res. Ch.	Res. No.	Author
None.					

STATUTES OF CALIFORNIA

2003–04

REGULAR SESSION

2004 CHAPTERS

CHAPTER 1

An act to amend Sections 1191.15, 3041, and 3043.2 of, and to add Section 3043.6 to, the Penal Code, and to add Section 1767.9 to the Welfare and Institutions Code, relating to victims, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor January 21, 2004. Filed with Secretary of State January 21, 2004.]

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

SECTION 1. Section 1191.15 of the Penal Code is amended to read:

1191.15. (a) The court may permit the victim of any crime, or his or her parent or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to file with the court a written, audiotaped, or videotaped statement, or statement stored on a CD Rom, DVD, or any other recording medium acceptable to the court, expressing his or her views concerning the crime, the person responsible, and the need for restitution, in lieu of or in addition to the person personally appearing at the time of judgment and sentence. The court shall consider the statement filed with the court prior to imposing judgment and sentence.

Whenever an audio or video statement or statement stored on a CD Rom, DVD, or other medium is filed with the court, a written transcript of the statement shall also be provided by the person filing the statement, and shall be made available as a public record of the court after the judgment and sentence have been imposed.

(b) Whenever a written, audio, or video statement or statement stored on a CD Rom, DVD, or other medium is filed with the court, it shall remain sealed until the time set for imposition of judgment and sentence except that the court, the probation officer, and counsel for the parties may view and listen to the statement not more than two court days prior to the date set for imposition of judgment and sentence.

(c) No person may, and no court shall, permit any person to duplicate, copy, or reproduce by any audio or visual means any statement submitted to the court under the provisions of this section.

(d) Nothing in this section shall be construed to prohibit the prosecutor from representing to the court the views of the victim or his or her parent or guardian or the next of kin.

(e) In the event the court permits an audio or video statement or statement stored on a CD Rom, DVD, or other medium to be filed, the court shall not be responsible for providing any equipment or resources needed to assist the victim in preparing the statement.

SEC. 2. Section 3041 of the Penal Code is amended to read:

3041. (a) In the case of any prisoner sentenced pursuant to any provision of law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Prison Terms shall meet with each inmate during the third year of incarceration for the purposes of reviewing the inmate's file, making recommendations, and documenting activities and conduct pertinent to granting or withholding postconviction credit. One year prior to the inmate's minimum eligible parole release date a panel consisting of at least two commissioners of the Board of Prison Terms shall again meet with the inmate and shall normally set a parole release date as provided in Section 3041.5. The panel shall consist solely of commissioners or deputy commissioners from the Board of Prison Terms. The release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the prisoner was sentenced and other factors in mitigation or aggravation of the crime. At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole to the full board for an en banc hearing. In case of a review, a majority vote of the full Board of Prison Terms in favor of parole is required to grant parole to any prisoner.

(b) The panel or board shall set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting. After the effective date of this subdivision, any decision of the parole panel finding an inmate suitable for parole shall become final within 120 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall consult with the commissioners who conducted the parole consideration hearing. No decision of the parole panel shall be disapproved and

referred for rehearing except by a majority vote of the board following a public hearing.

(c) For the purpose of reviewing the suitability for parole of those prisoners eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each prisoner until the time the person is released pursuant to proceedings or reaches the expiration of his or her term as calculated under Section 1170.2.

(d) Notwithstanding subdivision (a) and Section 5076.1, on an emergency basis, and only until December 31, 2005, life parole consideration hearings or life rescission hearings may be conducted by two-person panels consisting of at least one commissioner. In the event of a tie vote, the matter shall be referred to the full board for a decision. It is the intent of the Legislature in enacting this subdivision to allow the board to increase the number of hearings conducted each month to eliminate the backlog of inmates awaiting a parole consideration hearing. The board shall report monthly on the number of hearings conducted in the previous month, the number scheduled in the current and subsequent months, the backlog of cases awaiting a hearing, and progress toward eliminating the backlog, if any. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.

SEC. 3. Section 3043.2 of the Penal Code is amended to read:

3043.2. (a) In lieu of personal appearance at any hearing to review the parole suitability or the setting of a parole date, the Board of Prison Terms may permit the victim, his or her next of kin, or immediate family members to file with the board a written, audiotaped, or videotaped statement, or statement stored on a CD Rom, DVD, or any other recording medium accepted by a court pursuant to Section 1191.15 or by the board, expressing his or her views concerning the crime and the person responsible. The statement may be personal messages from the person to the board made at any time or may be a statement made pursuant to Section 1191.16, or a combination of both. The board shall consider any statement filed prior to reaching a decision, and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

(b) Whenever an audio or video statement or a statement stored on a CD Rom, DVD, or other medium is filed with the board, a written transcript of the statement shall also be provided by the person filing the statement.

(c) Nothing in this section shall be construed to prohibit the prosecutor from representing to the board the views of the victim, his or her immediate family members, or next of kin.

(d) In the event the board permits an audio or video statement or statement stored on a CD Rom, DVD, or other medium to be filed, the board shall not be responsible for providing any equipment or resources needed to assist the victim in preparing the statement.

SEC. 4. Section 3043.6 is added to the Penal Code, to read:

3043.6. Any person authorized to appear at a parole hearing pursuant to Section 3043, or a prosecutor authorized to represent the views of the victim, his or her immediate family, or next of kin, pursuant to Section 3043.2, shall have the right to speak last before the board in regard to those persons appearing and speaking before the board at a parole hearing. Nothing in this section shall prohibit the person presiding at the hearing from taking any steps he or she deems appropriate to ensure that only accurate and relevant statements are considered in determining parole suitability as provided in law, including, but not limited to, the rebuttal of inaccurate statements made by any party.

SEC. 5. Section 1767.9 is added to the Welfare and Institutions Code, to read:

1767.9. Any person authorized to appear at a parole hearing pursuant to Section 1767 shall have the right to speak last before the board in regard to those persons appearing and speaking before the board at a parole hearing. Nothing in this section shall prohibit the person presiding at the hearing from taking any steps he or she deems appropriate to ensure that only accurate and relevant statements are considered in determining parole suitability as provided in law, including, but not limited to, the rebuttal of inaccurate statements made by any party.

SEC. 6. The board shall report to the Legislature no later than June 30, 2004, on the use of video conferencing to conduct life parole consideration hearings.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Because the appearance of victims at parole hearings is important to the operation of the criminal justice system, in order to facilitate the appearance of victims, it is necessary that this bill take effect immediately.

CHAPTER 2

An act to amend Section 120917 of the Health and Safety Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor January 21, 2004. Filed with Secretary of State January 21, 2004.]

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

SECTION 1. Section 120917 of the Health and Safety Code is amended to read:

120917. (a) The department, through its Office of AIDS and the authorized agents of the office, may participate in a rapid human immunodeficiency virus test research program conducted with the federal Centers for Disease Control and Prevention, involving innovative HIV testing and counseling programs. Under the rapid HIV test research program, as authorized by this section, the department may do the following:

(1) Perform and report clinical test results using a rapid HIV test for diagnosis, prior to test approval by the federal Food and Drug Administration (FDA). However, test performance and reporting shall only be done to the extent allowed under that device's investigational approval by the FDA and pursuant to a California Health and Human Services Agency Institutional Review Board-approved research protocol.

(2) Use a second independent HIV test to confirm initially reactive test results to the extent allowed under the investigational approval by the FDA. All rapid tests shall be confirmed using technology approved by the federal Food and Drug Administration. If the results from this confirmatory testing differ from the results of the rapid test, the subject shall be notified. No subject shall participate in the research protocol who does not provide appropriate contact information.

(b) An HIV counselor who is trained by the Office of AIDS and working in an HIV counseling and testing site funded by the department through a local health jurisdiction, or its agents, may do all of the following:

(1) Perform any HIV test that is classified as waived under the federal Clinical Laboratory Improvement Act (CLIA) (42 U.S.C. Sec. 263a and following) if all of the following conditions exist:

(A) The performance of the HIV test meets the requirements of CLIA and Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code.

(B) The person performing the HIV test meets the requirements for the performance of waived laboratory testing pursuant to subdivision (a) of Section 1206.5 of the Business and Professions Code. For purposes of this subdivision and subdivision (a) of Section 1206.5 of the Business and Professions Code, an HIV counselor trained by the Office of AIDS shall be ''other health care personnel providing direct patient care'' as referred to in paragraph (12) of subdivision (a) of Section 1206.5 of the Business and Professions Code.

(C) The patient is informed that the preliminary result of the test is indicative of the likelihood of HIV infection and that the result must be confirmed by an additional more specific test, or, if approved by the federal Food and Drug Administration for that purpose, a second different rapid HIV test. Nothing in this subdivision shall be construed to allow an HIV counselor trained by the Office of AIDS to perform any HIV test that is not classified as waived under the CLIA.

(2) Notwithstanding Sections 1246.5 and 2053 of the Business and Professions Code, order and report HIV test results from tests performed pursuant to paragraph (1) to patients without authorization from a licensed health care professional or his or her authorized representative. Patients with indeterminate or positive test results from tests performed pursuant to paragraph (1) shall be referred to a licensed health care provider whose scope of practice includes the authority to refer patients for laboratory testing for further evaluation.

(c) Notwithstanding any other provision of law, an HIV counselor acting in accordance with this section who successfully completes the HIV counselor training shall be deemed to have demonstrated sufficient literacy and comprehension to advance to the limited phlebotomy technician training and may substitute successful completion of the HIV counselor curriculum for the requirement for a high school diploma or General Education Development (GED) equivalent for a limited phlebotomy technician, as defined in Section 1029.116 of Title 17 of the California Code of Regulations pursuant to Section 1246 of the Business and Professions Code.

(d) An HIV counselor who meets the requirements of this section with respect to performing any HIV test that is classified as waived under the CLIA may not perform any other test unless that person meets the statutory and regulatory requirements for performing that other test.

SEC. 2. The Legislature finds and declares that the public health threat of the AIDS epidemic and the challenges of outreach to certain target populations for testing and counseling justify steps to ensure rapid HIV testing is made available expeditiously and safely. The Legislature further finds and declares that it would be inefficient, costly, and an impediment to deployment of the rapid HIV test if an HIV counselor has to be trained, using partially redundant curricula, by the Office of AIDS

in addition to an authorized training program for a limited phlebotomy technician, as defined in Section 1029.116 of Title 17 of the California Code of Regulations pursuant to Section 1246 of the Business and Professions Code. Therefore, it is the intent of the Legislature that the Office of AIDS, in consultation with the Laboratory Science Division of the State Department of Health Services, develop a comprehensive curriculum for training HIV counselors that integrates appropriate training for an HIV counselor and a limited phlebotomy technician (LPT) and that meets the LPT education, training, and experience standards set forth in paragraph (1) of subdivision (a) of Section 1034 of Title 17 of the California Code of Regulations pursuant to Section 1246 of the Business and Professions Code, except as provided in subdivision (c) of Section 120917 of the Health and Safety Code.

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

In order to authorize more personnel to participate in performing HIV tests as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 3

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

[Approved by Governor January 21, 2004. Filed with Secretary of State January 21, 2004.]

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

SECTION 1. (a) The sum of two million seventeen thousand nine hundred five dollars and ninety cents ($2,017,905.90) is hereby appropriated from the various funds, as specified in subdivision (b), to the Executive Officer of the California Victim Compensation and Government Claims Board for the payment of claims accepted by the board in accordance with the schedule set forth in subdivision (b). Those payments shall be made from the funds and accounts identified in that schedule. In the case of Budget Act item schedules identified in the schedule set forth in subdivision (b), those payments shall be made from the funds appropriated in the item schedule.

(b) Pursuant to subdivision (a), claims accepted by the California Victim Compensation and Government Claims Board shall be paid in accordance with the following schedule:

Total for Fund: California Beverage Container Recycling Fund (0133)	$11,046.00
Total for Fund: Compensation Insurance Fund (0512)	$556.00
Total for Fund: Corporation Tax Fund (0084)	$24,411.58
Total for Fund: Employment Development Contingent Fund (0185)	$5,266.86
Total for Fund: Flexelect Benefit Fund (0821)	$348.98
Total for Fund: General Fund (0001)	$94,879.48
Total for Fund: Health Care Deposit Fund (0912)	$185.03
Total for Fund: Item 0820–001–0001, Budget Act of 2003	$1,208.95
Total for Fund: Item 0845–001–0217, Budget Act of 2003	$1,085.00
Total for Fund: Item 0860–001–0001, Budget Act of 2003	$2,423.26
Total for Fund: Item 1111–002–0582, Budget Act of 2003	$1,848.00
Total for Fund: Item 1730–001–0001(1), Budget Act of 2003	$400.90
Total for Fund: Item 1730–001–0001(9), Budget Act of 2003	$1,946.00
Total for Fund: Item 1760–001–0001, Budget Act of 2003	$417.00
Total for Fund: Item 1760–001–0666(1), Budget Act of 2003	$864.15
Total for Fund: Item 1900–015–0830, Budget Act of 2002	$18.86
Total for Fund: Item 2660–001–0041, Budget Act of 2003	$132.00
Total for Fund: Item 2660–001–0042(1), Budget Act of 2003	$325.26
Total for Fund: Item 2660–001–0042(2), Budget Act of 2003	$705.07

Total for Fund: Item 2720–001–0044(1), Budget Act of 2003	$11,500.00
Total for Fund: Item 2740–001–0001, Budget Act of 2003	$2,180.78
Total for Fund: Item 2740–001–0044, Budget Act of 2003	$130.00
Total for Fund: Item 2740–001–0044(1), Budget Act of 2003	$1,967.57
Total for Fund: Item 2920–001–0001(6), Budget Act of 2002	$3,038.20
Total for Fund: Item 3340–001–0001(6), Budget Act of 2003	$1,973.42
Total for Fund: Item 3540–001–0001, Budget Act of 2003	$1,858.78
Total for Fund: Item 3600–001–0001, Budget Act of 2003	$2,200.00
Total for Fund: Item 3860–001–0001, Budget Act of 2002	$1,143.00
Total for Fund: Item 4200–103–0001(1), Budget Act of 2002	$63,696.67
Total for Fund: Item 4260–001–0001, Budget Act of 2003	$744,299.00
Total for Fund: Item 4260–001–0001(1), Budget Act of 2003	$127.00
Total for Fund: Item 4260–001–0001(2), Budget Act of 2003	$155.00
Total for Fund: Item 4300–003–0001, Budget Act of 2003	$1,200.00
Total for Fund: Item 4300–003–0001(1), Budget Act of 2003	$17,199.70
Total for Fund: Item 4300–101–0001(2), Budget Act of 2003	$1,358.22
Total for Fund: Item 4440–001–0001, Budget Act of 2003	$3,200.00
Total for Fund: Item 4440–011–0001(2), Budget Act of 2003	$3,329.96
Total for Fund: Item 5100–001–0870, Budget Act of 2002	$140.00
Total for Fund: Item 5160–001–0001(A), Budget Act of 2002	$4,648.67

Total for Fund: Item 5160–001–0001(1), Budget Act of 2003	$9,802.70
Total for Fund: Item 5180–001–0001, Budget Act of 2003	$55.10
Total for Fund: Item 5180–001–0001(2), Budget Act of 2003	$984.00
Total for Fund: Item 5180–001–0001(3), Budget Act of 2003	$6,480.08
Total for Fund: Item 5180–001–0890(25), Budget Act of 2003	$269.34
Total for Fund: Item 5240–001–0001, Budget Act of 2003	$25,599.15
Total for Fund: Item 5240–001–0001(1), Budget Act of 2003	$24,413.27
Total for Fund: Item 5240–001–0001(2), Budget Act of 2003	$25,940.32
Total for Fund: Item 5240–001–0001(3), Budget Act of 2003	$10,017.64
Total for Fund: Item 6110–001–0001, Budget Act of 2002	$5,482.59
Total for Fund: Item 6110–001–0001, Budget Act of 2003	$1,448.18
Total for Fund: Item 6610–001–0001(1), Budget Act of 2003	$1,253.03
Total for Fund: Item 7100–001–0588, Budget Act of 2003	$1,808.00
Total for Fund: Item 7100–001–0870, Budget Act of 2003	$889.00
Total for Fund: Item 7100–001–0870(1), Budget Act of 2003	$4,953.00
Total for Fund: Item 7100–011–0185, Budget Act of 2003	$4,637.64
Total for Fund: Item 7350–001–0001(3), Budget Act of 2003	$17,499.00
Total for Fund: Item 8350–001–0001, Budget Act of 2002	$4,515.00
Total for Fund: Item 8700–001–0001, Budget Act of 2003	$560.00
Total for Fund: Item 8940–001–0001(1), Budget Act of 2003	$195.00

Total for Fund: Item 8940–001–0001(5), Budget Act of 2003	$27,174.00
Total for Fund: Item 8955–001–0001, Budget Act of 2003	$255.00
Total for Fund: Item 8965–001–0001, Budget Act of 2003	$578,299.86
Total for Fund: Item 8965–001–0001(1), Budget Act of 2003	$268.75
Total for Fund: Motor Vehicle Fuel Account, Transportation Tax Fund (0061)	$3,693.09
Total for Fund: Payroll Revolving Fund, State (0675)	$16,332.91
Total for Fund: Personal Income Tax Fund (0091)	$260.00
Total for Fund: Public Employees' Health Care Fund (0822)	$1,218.38
Total for Fund: Public Employees' Retirement Fund (0830)	$634.75
Total for Fund: Residential Earthquake Recovery Fund, CA (0285)	$68.28
Total for Fund: Tax Relief and Refund Account (0027)	$204,777.59
Total for Fund: Unclaimed Property Fund (0970)	$266.31
Total for Fund: Unemployment Administration Fund (0870)	$487.56
Total for Fund: Unemployment Compensation Disability Fund (0588)	$4,246.29
Total for Fund: Unemployment Fund (0871)	$7,891.00
Total for Fund: Welfare Advance Fund (0696)	$11,815.74

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

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

CHAPTER 4

An act to amend Section 4040 of, and to add Section 1315 to, and to repeal Sections 4041 and 4043 of, the Insurance Code, relating to loans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor January 21, 2004. Filed with Secretary of State January 21, 2004.]

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

SECTION 1. Section 1315 is added to the Insurance Code, to read:

1315. A reciprocal exchange or interinsurance exchange may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that the money is required to be repaid only out of the exchange's surplus in excess of that stipulated in the agreement. The agreement may provide for fixed or variable interest not exceeding an amount allowed by the commissioner, which interest shall or shall not constitute a liability of the exchange as to its funds other than the excess that is stipulated in the agreement. Any agreement of this type shall provide that all interest payments and principal repayments require prior approval by the commissioner. Unless otherwise approved by the commissioner, written agreements evidencing this borrowed money shall not be issued in units of less than ten thousand dollars ($10,000). Unless otherwise allowed by the commissioner, no commission or promotion expense shall be paid in connection with any loan of this type. An agreement to borrow money to provide surplus funds, or for any business purpose, may be termed a surplus note. No surplus note or other agreement may be issued unless it conforms to the requirements set forth at the time the note is issued in the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners for the reporting of agreements as surplus and not as debt in the financial statements required to be filed by an insurer with the commissioner. No permit or other agreement shall constitute authorization or approval for any other issuance of securities that is connected to the note or agreement in any way.

SEC. 2. Section 4040 of the Insurance Code is amended to read:

4040. A mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that the money is required to be repaid only out of the insurer's surplus in excess of that stipulated in the agreement. The agreement may provide for fixed or variable interest not exceeding an amount allowed by the commissioner, which interest shall or shall not constitute a liability of the insurer as to its funds other than

the excess that is stipulated in the agreement. Any agreement of this type shall provide that all interest payments and principal repayments require prior approval by the commissioner. Unless otherwise approved by the commissioner, written agreements evidencing this borrowed money shall not be issued in units of less than ten thousand dollars ($10,000). Unless otherwise allowed by the commissioner, no commission or promotion expense shall be paid in connection with any loan of this type. An agreement to borrow money to provide surplus funds, or for any business purpose, may be termed a surplus note. No surplus note or other agreement may be issued unless it conforms to the requirements set forth at the time the note is issued in the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners for the reporting of agreements as surplus and not as debt in the financial statements required to be filed by an insurer with the commissioner. No permit or other agreement shall constitute authorization or approval for any other issuance of securities that is connected to the note or agreement in any way.

SEC. 3. Section 4041 of the Insurance Code is repealed.

SEC. 4. Section 4043 of the Insurance Code is repealed.

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

In order to promote to the financial stability and solvency of insurers, it is necessary that this act take effect immediately.

CHAPTER 5

An act to add Chapter 5.4 (commencing with Section 8455) to Division 1 of Title 2 of the Government Code, relating to public safety, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor January 21, 2004. Filed with Secretary of State January 21, 2004.]

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 the American Heart Association an individual goes into cardiac arrest in the United States every two minutes. And of these, an estimated 225,000 Americans die each year. In California, 42 percent of all deaths are attributed to heart disease. Many of these deaths are caused by sudden cardiac arrest. Most cardiac arrests are caused by

ventricular fibrillation, for which cardiopulmonary resuscitation (CPR) and defibrillation are the only effective treatments. With every minute that passes, a victim's survival rate is reduced by 7 to 10 percent if no intervention measures are taken. An estimated 95 percent of cardiac arrest victims die before reaching the hospital. If intervention measures are taken, survival rates are much higher; when CPR and defibrillation are immediately performed, survival rates can double.

(b) Eighty percent of all cardiac arrests occur in the home, and almost 60 percent are witnessed. In communities that have established and implemented public access defibrillation programs have achieved average survival rates for out-of-hospital cardiac arrest as high as 48 to 74 percent.

(c) Wide use of defibrillators could save as many as 40,000 lives nationally each year. Successful public access defibrillation programs ensure that cardiac arrest victims have access to early 911 notification, early cardiopulmonary resuscitation, early defibrillation, and early advanced care.

SEC. 2. Chapter 5.4 (commencing with Section 8455) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 5.4. AUTOMATED EXTERNAL DEFIBRILLATORS IN STATE BUILDINGS

8455. (a) The Department of General Services shall apply for federal funds made available through the federal Community Access to Emergency Devices Act (Public Law 107-188) for the purchase of automated external defibrillators to be located within state-owned and leased buildings.

(b) Subject to the receipt of federal funds for this purpose, the Department of General Services shall, in consultation with the Emergency Medical Services Authority, the American Red Cross, and the American Heart Association, develop and adopt policies and procedures relative to the placement and use of automated external defibrillators in state-owned and leased buildings and ensure that training is consistent with Section 1797.196 of the Health and Safety Code and the regulations adopted pursuant to that section. In these consultations, the department may consider all of the following:

(1) Whether the public has access to the state-owned or leased building.

(2) Placement within the building that maximizes access to the device.

(3) The manufacturer's and the medical community's directions regarding placement and use of the device.

(4) The appropriate oversight and maintenance of the device at a particular location.

(5) Whether to require those who are trained to use the automated external defibrillators pursuant to Emergency Medical Services Authority standards to receive cardiopulmonary resuscitation training.

(c) The policies and procedures adopted pursuant to this section shall be consistent with Section 3400 of Title 8 of the California Code of Regulations.

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

In order to provide immediate assistance to persons in state-owned or state-leased buildings who might otherwise die or suffer severe injury from cardiac arrest, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 6

An act to amend Section 6107 of, and to add Section 27201.5 to, the Government Code, and to amend Section 103526 of the Health and Safety Code, relating to public records, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor January 21, 2004. Filed with Secretary of State January 22, 2004.]

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

SECTION 1. Section 6107 of the Government Code is amended to read:

6107. (a) No public entity, including the state, a county, city, or other political subdivision, nor any officer or employee thereof, including notaries public, shall demand or receive any fee or compensation for doing any of the following:

(1) Recording, indexing, or issuing certified copies of any discharge, certificate of service, certificate of satisfactory service, notice of separation, or report of separation of any member of the Armed Forces of the United States.

(2) Furnishing a certified copy of, or searching for, any public record that is to be used in an application or claim for a pension, allotment, allowance, compensation, insurance (including automatic insurance), or any other benefits under any act of Congress for service in the Armed

Forces of the United States or under any law of this state relating to veterans' benefits.

(3) Furnishing a certified copy of, or searching for, any public record that is required by the Veterans Administration to be used in determining the eligibility of any person to participate in benefits made available by the Veterans Administration.

(4) Rendering any other service in connection with an application or claim referred to in paragraph (2) or (3).

(b) A certified copy of any record referred to in subdivision (a) may be made available only to one of the following:

(1) The person who is the subject of the record upon presentation of proper photo identification.

(2) A family member or legal representative of the person who is the subject of the record upon presentation of proper photo identification and certification of their relationship to the subject of the record.

(3) A county office that provides veteran's benefits services upon written request of that office.

(4) A United States official upon written request of that official. A public officer or employee is liable on his or her official bond for failure or refusal to render the services.

SEC. 2. Section 27201.5 is added to the Government Code, to read:

27201.5. (a) A notary acknowledgment shall be deemed complete for recording purposes without a photographically reproducible official seal of the notary public if the seal, as described in Section 8207, is present and legible, and the name of the notary, the county of the notary's principal place of business, the notary's telephone number, the notary's registration number, and the notary's commission expiration date are typed or printed in a manner that is photographically reproducible below, or immediately adjacent to, the notary's signature in the acknowledgment.

(b) If a request for a certified copy of a birth or death record is received by mail, a notarized statement sworn under penalty of perjury shall accompany the request, stating that the requester is an authorized person, as defined by law.

SEC. 3. Section 103526 of the Health and Safety Code is amended to read:

103526. (a) If the State Registrar, local registrar, or county recorder receives a written or faxed request for a certified copy of a birth or death record pursuant to Section 103525, or a military service record pursuant to Section 6107 of the Government Code, that is accompanied by a notarized statement sworn under penalty of perjury, or a faxed copy of a notarized statement sworn under penalty of perjury, that the requester is an authorized person, as defined in this section, that official may furnish a certified copy to the applicant in accordance with Section

103525 and in accordance with Section 6107 of the Government Code. If a written request for a certified copy of a military service record is submitted to a county recorder by fax, the county recorder may furnish a certified copy of the military record to the applicant in accordance with Section 103525. A faxed notary acknowledgment accompanying a faxed request received pursuant to this subdivision for a certified copy of a birth or death record or a military service record shall be legible and, if the notary's seal is not photographically reproducible, show the name of the notary, the county of the notary's principal place of business, the notary's telephone number, the notary's registration number, and the notary's commission expiration date typed or printed in a manner that is photographically reproducible below, or immediately adjacent to, the notary's signature in the acknowledgment. If a request for a certified copy of a birth or death record is made in person, the official shall take a statement sworn under penalty of perjury that the requester is signing his or her own legal name and is an authorized person, and that official may then furnish a certified copy to the applicant.

(b) In all other circumstances, the certified copy provided to the applicant shall be an informational certified copy and shall display a legend that states ''INFORMATIONAL, NOT A VALID DOCUMENT TO ESTABLISH IDENTITY.'' The legend shall be placed on the certificate in a manner that will not conceal information.

(c) For purposes of this section, an ''authorized person'' is any of the following:

(1) The registrant or a parent or legal guardian of the registrant.

(2) A party entitled to receive the record as a result of a court order, or an attorney or a licensed adoption agency seeking the birth record in order to comply with the requirements of Section 3140 or 7603 of the Family Code.

(3) A member of a law enforcement agency or a representative of another governmental agency, as provided by law, who is conducting official business.

(4) A child, grandparent, grandchild, sibling, spouse, or domestic partner of the registrant.

(5) An attorney representing the registrant or the registrant's estate, or any person or agency empowered by statute or appointed by a court to act on behalf of the registrant or the registrant's estate.

(6) Any agent or employee of a funeral establishment who acts within the course and scope of his or her employment and who orders certified copies of a death certificate on behalf of any individual specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 7100.

(d) Any person who asks the agent or employee of a funeral establishment to request a death certificate on his or her behalf warrants the truthfulness of his or her relationship to the decedent, and is

personally liable for all damages occasioned by, or resulting from, a breach of that warranty.

(e) Notwithstanding any other provision of law:

(1) Any member of a law enforcement agency or a representative of a state or local government agency, as provided by law, who orders a copy of a record to which subdivision (a) applies in conducting official business may not be required to provide the notarized statement required by subdivision (a).

(2) An agent or employee of a funeral establishment who acts within the course and scope of his or her employment and who orders death certificates on behalf of individuals specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 7100 shall not be required to provide the notarized statement required by subdivision (a).

(f) Informational certified copies of birth and death certificates issued pursuant to subdivision (b) shall only be printed from the single statewide database prepared by the State Registrar and shall be electronically redacted to remove any signatures for purposes of compliance with this section. Local registrars and county recorders shall not issue informational certified copies of birth and death certificates from any source other than the statewide database prepared by the State Registrar. This subdivision shall become operative on January 1, 2006.

(g) This section shall become operative on July 1, 2003.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to timely establish appropriate procedures for the acquisition of military service records, it is necessary that this act take effect immediately.

CHAPTER 7

An act to amend Section 9109 of the Commercial Code, to amend Section 15147 of the Education Code, to amend Sections 8855, 53692, and 91521.3 of, to amend the heading of Chapter 11.5 (commencing with Section 8855) of Division 1 of Title 2 of, and to repeal Section 8858 of, the Government Code, and to amend Section 44533 of the Health and Safety Code, relating to government financing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor January 21, 2004. Filed with Secretary of State January 22, 2004.]

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

SECTION 1. Section 9109 of the Commercial Code is amended to read:

9109. (a) Except as otherwise provided in subdivisions (c) and (d), this division applies to each of the following:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract.

(2) An agricultural lien.

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes.

(4) A consignment.

(5) A security interest arising under Section 2401 or 2505, or under subdivision (3) of Section 2711, or subdivision (5) of Section 10508, as provided in Section 9110.

(6) A security interest arising under Section 4210 or 5118.

(b) The application of this division to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this division does not apply.

(c) This division does not apply to the extent that either of the following conditions is satisfied:

(1) A statute, regulation, or treaty of the United States preempts this division.

(2) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 5114.

(d) This division does not apply to any of the following:

(1) A landlord's lien, other than an agricultural lien.

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9333 applies with respect to priority of the lien.

(3) An assignment of a claim for wages, salary, or other compensation of an employee.

(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose.

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only.

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract.

(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness.

(8) Any loan made by an insurance company pursuant to the provisions of a policy or contract issued by it and upon the sole security of the policy or contract.

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral.

(10) A right of recoupment or setoff, provided that both of the following sections apply:

(A) Section 9340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts.

(B) Section 9404 applies with respect to defenses or claims of an account debtor.

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for each of the following:

(A) Liens on real property in Sections 9203 and 9308.

(B) Fixtures in Section 9334.

(C) Fixture filings in Sections 9501, 9502, 9512, 9516, and 9519.

(D) Security agreements covering personal and real property in Section 9604.

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(13) An assignment of a deposit account in a consumer transaction, but Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(14) Any security interest created by the assignment of the benefits of any public construction contract under the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(15) Transition property, as defined in Section 840 of the Public Utilities Code, except to the extent that the provisions of this division are referred to in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(16) A claim or right of an employee or employee's dependents to receive workers' compensation under Division 1 (commencing with Section 50) or Division 4 (commencing with Section 3200) of the Labor Code.

(17) A transfer by a government or governmental unit.

SEC. 1.5. Section 15147 of the Education Code is amended to read:

15147. Before selling the bonds, or any part of them, the board of supervisors or community college district, as appropriate, shall give notice as required by Section 53692 of the Government Code.

SEC. 2. The heading of Chapter 11.5 (commencing with Section 8855) of Division 1 of Title 2 of the Government Code is amended to read:

CHAPTER 11.5. CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION

SEC. 3. Section 8855 of the Government Code is amended to read:

8855. (a) There is created the California Debt and Investment Advisory Commission, consisting of nine members, selected as follows:

(1) The Treasurer, or his or her designee.

(2) The Governor or the Director of Finance.

(3) The Controller, or his or her designee.

(4) Two local government finance officers appointed by the Treasurer, one each from among persons employed by a county and by a city or a city and county of this state, experienced in the issuance and sale of municipal bonds and nominated by associations affiliated with these agencies.

(5) Two Members of the Assembly appointed by the Speaker of the Assembly.

(6) Two Members of the Senate appointed by the Senate Committee on Rules.

(b) (1) The term of office of an appointed member is four years, but appointed members serve at the pleasure of the appointing power. In case of a vacancy for any cause, the appointing power shall make an appointment to become effective immediately for the unexpired term.

(2) Any legislators appointed to the commission shall meet with and participate in the activities of the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For purposes of this chapter, the Members of the Legislature shall constitute a joint interim legislative committee on the subject of this chapter.

(c) The Treasurer shall serve as chairperson of the commission and shall preside at meetings of the commission.

(d) Appointed members of the commission shall not receive a salary, but shall be entitled to a per diem allowance of fifty dollars ($50) for each day's attendance at a meeting of the commission not to exceed three hundred dollars ($300) in any month, and reimbursement for expenses incurred in the performance of their duties under this chapter, including travel and other necessary expenses.

(e) The commission may adopt bylaws for the regulation of its affairs and the conduct of its business.

(f) The commission shall meet on the call of the chairperson, at the request of a majority of the members, or at the request of the Governor. A majority of all nonlegislative members of the commission constitutes a quorum for the transaction of business.

(g) The office of the Treasurer shall furnish all administrative and clerical assistance required by the commission.

(h) The commission shall do all of the following:

(1) Assist all state financing authorities and commissions in carrying out their responsibilities as prescribed by law, including assistance with respect to federal legislation pending in Congress.

(2) Upon request of any state or local government units, to assist them in the planning, preparation, marketing, and sale of new debt issues to reduce cost and to assist in protecting the issuer's credit.

(3) Collect, maintain, and provide comprehensive information on all state and all local debt authorization and issuance, and serve as a statistical clearinghouse for all state and local debt issues. This information shall be readily available upon request by any public official or any member of the public.

(4) Maintain contact with state and municipal bond issuers, underwriters, credit rating agencies, investors, and others to improve the market for state and local government debt issues.

(5) Undertake or commission studies on methods to reduce the costs and improve credit ratings of state and local issues.

(6) Recommend changes in state laws and local practices to improve the sale and servicing of state and local debts.

(7) Establish a continuing education program for local officials having direct or supervisory responsibility over municipal investments, and debt issuance. The commission shall undertake these and any other activities necessary to disclose investment and debt issuance practices and strategies that may be conducive for oversight purposes.

(8) Collect, maintain, and provide information on local agency investments of public funds for local agency investment.

(9) Publish a monthly newsletter describing and evaluating the operations of the commission during the preceding month.

(i) The city, county, or city and county investor of any public funds, no later than 60 days after the close of the second and fourth quarters of each calendar year, shall provide the quarterly reports required pursuant to Section 53646 and, no later than 60 days after the close of the second quarter of each calendar year and 60 days after the subsequent amendment thereto, provide the statement of investment policy required pursuant to Section 53646, to the commission by mail, postage prepaid, or by any other method approved by the commission. The commission shall collect these reports to further its educational responsibilities as described under subdivision (e). Nothing in this section shall be construed to create additional oversight responsibility for the commission or any of its members. Sole responsibility for control, oversight, and accountability of local investment decisions shall remain with local officials. The commission shall not be considered to have any fiduciary duty with respect to any local agency income report received

under this subdivision. In addition, the commission shall not have any legal liability with respect to these investments.

(j) The commission, no later than May 1, 2006, shall report to the Legislature describing its activities since the inception of the local agency investment reporting program regarding the collection and maintenance of information on local agency investment reporting practices and how the commission uses that information to fulfill its statutory goals.

(k) The issuer of any proposed new debt issue of state or local government shall, no later than 30 days prior to the sale of any debt issue at public or private sale, give written notice of the proposed sale to the commission, by mail, postage prepaid. This subdivision shall also apply to any nonprofit public benefit corporation incorporated for the purpose of acquiring student loans. The notice shall include the proposed sale date, the name of the issuer, the type of debt issue, and the estimated principal amount of the debt. Failure to give this notice shall not affect the validity of the sale.

(*l*) The issuer of any new debt issue of state or local government, not later than 45 days after the signing of the bond purchase contract in a negotiated or private financing, or after the acceptance of a bid in a competitive offering, shall submit a report of final sale to the commission by mail, postage prepaid, or by any other method approved by the commission. A copy of the final official statement for the issue shall accompany the report of final sale. The commission may require information to be submitted in the report of final sale that it considers appropriate.

SEC. 4. Section 8858 of the Government Code is repealed.

SEC. 5. Section 53692 of the Government Code is amended to read:

53692. In addition to any other requirement imposed by law, at least 15 days prior to the sale of any public securities that exceed one million dollars ($1,000,000) but do not exceed ten million dollars ($10,000,000) at a public sale and at least five days prior to the sale of any public securities that exceed ten million dollars ($10,000,000) at a public sale, an issuer shall publish notice of the intention to sell the securities in a financial publication generally circulated throughout the state or reasonably expected to be disseminated among prospective bidders for the securities. The notice shall include the date, time, and place of the intended sale and the amount of the securities to be sold.

SEC. 6. Section 91521.3 of the Government Code is amended to read:

91521.3. Authorities shall not be authorized to undertake projects through the issuance of bonds on or after January 1, 2006, unless a later enacted statute, which is enacted before January 1, 2006, deletes or

extends that date. This section does not apply to issuance of bonds to refund any bonds issued prior to January 1, 2006.

SEC. 7. Section 44533 of the Health and Safety Code is amended to read:

44533. (a) No project relating to the improvement of air or water quality or solid waste control or related to the remediation of property contaminated by a release of hazardous materials shall be eligible for financing under this division unless, prior to the issuance of bonds or notes, a local, regional, state, or federal environmental authority exercising jurisdiction over the project certifies that the project, as designed, will further compliance with federal, state, or local pollution control standards and requirements. Within 60 days of the receipt of a written request for that certification by either the authority or a participating party, the local, regional, state, or federal authority shall issue a written certificate to that effect if, in fact, the project as designed, is in furtherance of those purposes. The certification requirements of this subdivision may be waived by the authority, at the request of the participating party, if that certification is not necessary to qualify the bonds or notes for tax-exempt status under federal laws and regulations.

(b) No certification issued pursuant to subdivision (a) shall be admissible in evidence, constitute an admission, or bind any certifying authority in any proceeding in which the compliance of a participating party's facilities with any applicable pollution control, land use, zoning, or other similar law is an issue or in any application or proceeding for a permit to locate or construct facilities.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to correct statutory ambiguities and duplications relating to the issuance of public debt and other matters relating to public finance at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 8

An act to amend Section 6254 of the Government Code, relating to public agency security, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor January 21, 2004. Filed with Secretary of State January 22, 2004.]

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

SECTION 1. 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 memoranda 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 (b) of Section 13951, 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.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

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

In order to provide enhanced security for the public and public agencies through the protection from disclosure of specified documents at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 9

An act to amend Section 85401 of the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor January 21, 2004. Filed with Secretary of State January 22, 2004.]

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

SECTION 1. Section 85401 of the Government Code, as added by Chapter 102 of the Statutes of 2000, is amended to read:

85401. (a) Each candidate for elective state office shall file a statement of acceptance or rejection of the voluntary expenditure limits set forth in Section 85400 at the time he or she files the statement of intention specified in Section 85200.

(b) A candidate may, until the deadline for filing nomination papers set forth in Section 8020 of the Elections Code, change his or her statement of acceptance or rejection of voluntary expenditure limits provided he or she has not exceeded the voluntary expenditure limits. A candidate may not change his or her statement of acceptance or rejection of voluntary expenditure limits more than twice after the initial filing of nomination papers for that election and office.

(c) Any candidate for elective state office who declined to accept the voluntary expenditure limits but who nevertheless does not exceed the

limits in the primary, special primary, or special election, may file a statement of acceptance of the expenditure limits for a general or special runoff election within 14 days following the primary, special primary, or special election.

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 this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that its provisions apply to candidates' filings for the 2004 statewide primary election, it is necessary for this act to take effect immediately.

CHAPTER 10

An act to amend Section 65863 of the Government Code, relating to land use, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor January 21, 2004. Filed with Secretary of State January 22, 2004.]

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

SECTION 1. Section 65863 of the Government Code is amended to read:

65863. (a) Each city, county, or city and county shall ensure that its inventory or programs of adequate sites pursuant to paragraph (3) of subdivision (a) of Section 65583 and paragraph (1) of subdivision (c) of Section 65583 can accommodate its share of the regional housing need pursuant to Section 65584, throughout the planning period.

(b) No city, county, or city and county shall, by administrative, quasi-judicial, or legislative action, reduce, require, or permit the reduction of the residential density for any parcel to a lower residential

density that is below the density that was utilized by the Department of Housing and Community Development in determining compliance with housing element law, Article 10.6 (commencing with Section 65580) of Chapter 3, unless the city, county, or city and county makes written findings supported by substantial evidence of both of the following:

(1) The reduction is consistent with the adopted general plan, including the housing element.

(2) The remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584.

(c) If a reduction in residential density for any parcel would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584, the jurisdiction may reduce the density on that parcel if it identifies sufficient additional, adequate, and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity.

(d) The requirements of this section shall be in addition to any other law that may restrict or limit the reduction of residential density.

(e) If a court finds that an action of a city, county, or city and county is in violation of this section, the court shall award to the plaintiff or petitioner who proposed the housing development, reasonable attorney's fees and costs of suit, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section or the court finds that the action was frivolous. This subdivision shall remain operative only until January 1, 2007, and as of that date is no longer operative, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

(f) This section requires that a city, county, or city and county be solely responsible for compliance with this section, unless a project applicant requests in his or her initial application, as submitted, a density that would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584. In that case, the city, county, or city and county may require the project applicant to comply with this section. The submission of an application for purposes of this subdivision does not depend on the application being deemed complete or being accepted by the city, county, or city and county.

(g) This section shall not be construed to apply to parcels that, prior to January 1, 2003, were either (1) subject to a development agreement, or (2) parcels for which an application for a subdivision map had been submitted.

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

In order to provide housing for California residents and to clarify that local governments should not unnecessarily condition development projects, it is necessary that this act take effect immediately.

CHAPTER 11

An act to amend Sections 22200, 22224, and 22225 of, and to add Section 22227 to, the Education Code, and to amend Section 4 of Chapter 1049 of the Statutes of 2002, relating to the Teachers' Retirement Board, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor January 28, 2004. Filed with Secretary of State January 28, 2004.]

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

SECTION 1. Section 22200 of the Education Code, as added by Chapter 1049 of the Statutes of 2002, is amended to read:

22200. (a) The plan and the system are administered by the Teachers' Retirement Board. On and after January 1, 2004, the members of the board are as follows:

(1) The Superintendent of Public Instruction.

(2) The Controller.

(3) The Treasurer.

(4) The Director of Finance.

(5) Three persons who are either members of the Defined Benefit Program or participants in the Cash Balance Benefit Program, as follows:

(A) One person who, at the time of election, is an active member of the Defined Benefit Program or an active participant of the Cash Balance Benefit Program employed by a school district that provides instruction for grades K to 12, inclusive, or a county office of education, in a position other than a school administrator that requires a services credential with a specialization in administrative services. This member shall be elected by the active members of the Defined Benefit Program and active participants of the Cash Balance Benefit Program who are employed by a school district that provides instruction for grades K to 12, inclusive,

or county office of education, pursuant to regulations adopted by the board, for a four-year term commencing on January 1, 2004.

(B) One person who, at the time of election, is an active member of the Defined Benefit Program or an active participant of the Cash Balance Benefit Program employed by a school district that provides instruction for grades K to 12, inclusive, or a county office or education. This member shall be elected by the active members of the Defined Benefit Program and active participants of the Cash Balance Benefit Program who are employed by a school district that provides instruction for grades K to 12, inclusive, or a county office of education, pursuant to regulations adopted by the board, for a four-year term commencing on January 1, 2004.

(C) One person who, at the time of election, is a community college instructor and an active member of the Defined Benefit Program or an active participant of the Cash Balance Benefit Program employed by a community college district, who shall be elected by the active community college members of the Defined Benefit Program and the active community college participants of the Cash Balance Benefit Program, pursuant to regulations adopted by the board, for a four-year term commencing on January 1, 2004.

(6) Five persons appointed by the Governor for a term of four years, subject to confirmation by the Senate, as follows:

(A) One person who, at the time of appointment, is a member of the governing board of a school district or a community college district.

(B) One person who is either a retired member under this part or a retired participant under Part 14 (commencing with Section 26000).

(C) Three persons representing the public, whose terms shall be staggered by varying the first terms of these members, as follows:

(i) One person to a term expiring December 31, 2005.

(ii) One person to a term expiring December 31, 2006.

(iii) One person to a term expiring December 31, 2007.

(b) A person who is employed to perform creditable service by a community college district and either a school district that provides instruction for kindergarten through grade 12 or a county office of education may only be elected to the position on the board that corresponds to the position in which they accrued the most service credit during the prior school year.

(c) The members of the board shall annually elect a chairperson and vice chairperson.

SEC. 2. Section 22224 of the Education Code is amended to read:

22224. Members of the Defined Benefit Program and participants of the Cash Balance Benefit Program, who are either elected to the board or appointed to the board by the Governor pursuant to Section 22200, or who are appointed by the board to serve on a committee or subcommittee

of the board or a panel of the system, shall be granted, by his or her employer, sufficient time away from regular duties, without loss of compensation or other benefits to which the person is entitled by reason of employment, to attend meetings of the board or any of its committees or subcommittees of which the person is a member, or to serve as a member of a panel of the system, and to attend to the duties expected to be performed by the person.

SEC. 3. Section 22225 of the Education Code is amended to read:

22225. (a) The compensation of the members of the Defined Benefit Program and participants of the Cash Balance Benefit Program who are either elected to the board or appointed to the board by the Governor pursuant to Section 22200, or who are appointed by the board to a committee or subcommittee, or to a panel of the system, may not be reduced by his or her employer for any absence from service occasioned by attendance upon the business of the board, pursuant to Section 22224.

(b) Each employer that employs either a member of the Defined Benefit Program or a participant of the Cash Balance Benefit Program elected or appointed pursuant to Section 22224 and that employs a person to replace the member or participant during attendance at meetings of the board, its committees or subcommittees, or when serving as a member of a panel of the system, or when carrying out other duties approved by the board, shall be reimbursed from the retirement fund for the cost incurred by employing a replacement.

SEC. 4. Section 22227 is added to the Education Code, to read:

22227. It is the intent of the Legislature that candidates for board seats described in paragraph (5) of subdivision (a) of Section 22200, including incumbent board members running for reelection, shall file campaign statements with the Secretary of State according to campaign reporting, contribution limits, and conflict of interest provisions of the Political Reform Act, adapted for the unique characteristics of elected member seats on state retirement system boards.

SEC. 5. Section 4 of Chapter 1049 of the Statutes of 2002 is amended to read:

Sec. 4. Section 1 of this act shall become operative on January 1, 2004.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to apply to the first election of members to the Teachers' Retirement Board, which is scheduled to take

place prior to January 1, 2004, it is necessary that this act take effect immediately.

CHAPTER 12

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

[Approved by Governor January 28, 2004. Filed with Secretary of State January 28, 2004.]

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

SECTION 1. The sum of seven million five hundred thousand dollars ($7,500,000) is hereby appropriated from the General Fund to the Attorney General to pay for the judgment and interest in the case of Mark Bravo v. State of California, et al. (L.A. County Superior Court, Case No. BC 105876).

Any funds appropriated in excess of the amounts actually required for the payment of this judgment and interest claim shall revert to the General Fund on June 30 of the fiscal year in which the final payment is made.

SEC. 2. The sum of one million one hundred nine thousand two hundred seventy-six dollars ($1,109,276) is hereby appropriated from the General Fund to the Attorney General to pay for the judgment in the case of Common Cause, et al. v. Bill Jones (D.C., C.D. Cal. No. 01-3470 SVW (RZX)).

SEC. 3. The sum of seven million dollars ($7,000,000) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Attorney General to pay for the settlement in the case of Lugtu v. California Highway Patrol (San Diego County Superior Court, Case No. N76651 Court of Appeal No. N040976).

SEC. 4. (a) The sum of two million two hundred fifty-six thousand five hundred dollars ($2,256,500) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Attorney General to pay for the settlement and interest costs in the case of Keep v. State of California, et al. (Los Angeles County Superior Court, Case No. BC 244537).

(b) The sum of two hundred sixty-three thousand dollars ($263,000) is hereby appropriated from the State Highway Account in the State Transportation Fund to the Attorney General to pay the settlement and

interest costs in the case of Keep v. State of California, et al. (Los Angeles County Superior Court, Case No. BC 244537).

(c) The sum of one million seven hundred thirty thousand five hundred dollars ($1,730,500) is hereby appropriated from the Motor Vehicle License Fee Account in the Transportation Tax Fund to the Attorney General to pay the settlement and interest costs in the case of Keep v. State of California, et al. (Los Angeles County Superior Court, Case No. BC 244537).

(d) Any funds appropriated pursuant to this section in excess of the amounts actually required for the payment of the settlement and interest claims specified in this section shall revert to the fund from which it is appropriated on June 30 of the fiscal year in which the final payment is made.

SEC. 5. The sum of seven million nine hundred twenty-six thousand dollars ($7,926,000) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles for the settlement in the case of William Dare, et al. v. Department of Motor Vehicles (United States District Court, Central District, Case No. CV96-5569 JSL (ANX)).

SEC. 6. The sum of six hundred thousand dollars ($600,000) is hereby reappropriated from Item 2240-102-0001 of Section 2.00 of the Budget Act of 1999 (Chapter 50 of the Statutes of 1999) to the Department of Housing and Community Development for the settlement of Vega, et al. v. Richard Mallory, the California Department of Housing and Community Development, et al. (Sacramento County Superior Court, Case No. 97AS06548).

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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

CHAPTER 13

An act to amend Sections 17041, 17052.6, 17301.3, 17302, and 19131 of, and to add Section 19136.11 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor February 11, 2004. Filed with Secretary of State February 11, 2004.]

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

SECTION 1. Section 17041 of the Revenue and Taxation Code is amended to read:

17041. (a) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident, except the head of a household as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of this state for the entire taxable year and for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions:

If the taxable income is:	The tax is:
Not over $3,650	1% of the taxable income
Over $3,650 but not over $8,650	$36.50 plus 2% of the excess over $3,650
Over $8,650 but not over $13,650	$136.50 plus 4% of the excess over $8,650
Over $13,650 but not over $18,950	$336.50 plus 6% of the excess over $13,650
Over $18,950 but not over $23,950	$654.50 plus 8% of the excess over $18,950
Over $23,950	$1,054.50 plus 9.3% of the excess over $23,950

(b) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident, except the head of a household as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the "taxable income of a nonresident or part-year resident," as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (a) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(c) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident for that taxable year, when the resident is the head of a household, as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of the state for the entire taxable year and for all prior taxable years for carryover items, deferred income, suspended losses, or suspended deductions:

If the taxable income is:	The tax is:
Not over $7,300	1% of the taxable income
Over $7,300 but not over $17,300	$73 plus 2% of the excess over $7,300
Over $17,300 but not over $22,300	$273 plus 4% of the excess over $17,300
Over $22,300 but not over $27,600	$473 plus 6% of the excess over $22,300
Over $27,600 but not over $32,600	$791 plus 8% of the excess over $27,600
Over $32,600	$1,191 plus 9.3% of the excess over $32,600

(d) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident when the nonresident or part-year resident is the head of a household, as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the ''taxable income of a nonresident or part-year resident,'' as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (c) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(e) There shall be imposed for each taxable year upon the taxable income of every estate, trust, or common trust fund taxes equal to the amount computed under subdivision (a) for an individual having the same amount of taxable income.

(f) The tax imposed by this part is not a surtax.

(g) (1) Section 1(g) of the Internal Revenue Code, relating to certain unearned income of minor children taxed as if the parent's income, shall apply, except as otherwise provided.

(2) Section 1(g)(7)(B)(ii)(II) of the Internal Revenue Code, relating to income included on parent's return, is modified, for purposes of this part, by substituting ''1 percent'' for ''15 percent.''

(h) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the income tax brackets prescribed in subdivisions (a) and (c). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall do both of the following:

(A) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to paragraph (1) and dividing the result by 100.

(B) Multiply the preceding taxable year income tax brackets by the inflation adjustment factor determined in subparagraph (A) and round off the resulting products to the nearest one dollar ($1).

(i) (1) For purposes of this part, the term ''taxable income of a nonresident or part-year resident'' includes each of the following:

(A) For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of gross income and all deductions, regardless of source.

(B) For any part of the taxable year during which the taxpayer was not a resident of this state, gross income and deductions derived from sources within this state, determined in accordance with Article 9 of Chapter 3 (commencing with Section 17301 and Chapter 11 (commencing with Section 17951).

(2) For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1), the amount of any net operating loss sustained in any taxable year during any part of which the taxpayer was not a resident of this state shall be limited to the sum of the following:

(A) The amount of the loss attributable to the part of the taxable year in which the taxpayer was a resident.

(B) The amount of the loss which, during the part of the taxable year the taxpayer is not a resident, is attributable to California source income and deductions allowable in arriving at taxable income of a nonresident or part-year resident.

(3) For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1), any carryover items, deferred income, suspended losses, or suspended deductions shall only be includable or allowable to the extent that the carryover item, deferred income, suspended loss, or suspended deduction was derived from sources within this state, calculated as if the nonresident or part-year resident, for the portion of the year he or she was a nonresident, had been a nonresident for all prior years.

SEC. 2. Section 17052.6 of the Revenue and Taxation Code is amended to read:

17052.6. (a) For each taxable year beginning on or after January 1, 2000, there shall be allowed as a credit against the ''net tax'' (as defined in Section 17039) an amount determined in accordance with Section 21 of the Internal Revenue Code, as modified by the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16), except that the amount of the credit shall be a percentage, as provided in subdivision (b) of the allowable federal credit without taking into account whether there is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

(1) For taxable years beginning before January 1, 2003:

If the adjusted gross income is:	The percentage of credit is:
$40,000 or less	63%
Over $40,000 but not over $70,000	53%
Over $70,000 but not over $100,000	42%
Over $100,000	0%

(2) For taxable years beginning on or after January 1, 2003:

If the adjusted gross income is:	The percentage of credit is:
$40,000 or less	50%
Over $40,000 but not over $70,000	43%
Over $70,000 but not over $100,000	34%
Over $100,000	0%

(c) In the case of a taxpayer whose credits provided under this section exceed the taxpayer's tax liability computed under this part, the excess shall be credited against other amounts due, if any, from the taxpayer and the balance, if any, shall be paid from the Tax Relief and Refund Account and refunded to the taxpayer.

(d) For purposes of this section, adjusted gross income means adjusted gross income as computed for purposes of paragraph (2) of subdivision (h) of Section 17024.5.

(e) The credit authorized by this section shall be limited to employment-related expenses, within the meaning of Section 21 of the Internal Revenue Code, but only for child care services or care provided in this state and only to the extent of earned income (within the meaning of Section 21(d) of the Internal Revenue Code) from sources within this state.

(f) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child (as defined in Section 151(c)(3) of the Internal Revenue Code) shall be treated, for purposes of Section 152 of the Internal Revenue Code (as applicable for purposes of this section), as receiving over one-half of his or her support during the calendar year from the parent having custody for a greater portion of the calendar year, that parent shall be treated as a ''custodial parent'' (within the meaning of Section 152(e) of the Internal Revenue Code, as applicable for purposes of this section), and the child shall be treated as a qualifying individual under Section 21(b)(1) of the Internal Revenue Code, as applicable for purposes of this section, if both of the following apply:

(1) The child receives over one-half of his or her support during the calendar year from his or her parents who never married each other and who live apart at all times during the last six months of the calendar year.

(2) The child is in the custody of one or both of his or her parents for more than one-half of the calendar year.

(g) The amendments to this section made by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 2002.

SEC. 3. Section 17301.3 of the Revenue and Taxation Code is amended to read:

17301.3. For purposes of this part, in the case of a nonresident or part-year resident, the term ''California adjusted gross income'' includes each of the following:

(a) For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income, regardless of source.

(b) For any part of the taxable year during which the taxpayer was not a resident of this state, adjusted gross income derived from sources within this state, determined in accordance with Article 9 (commencing with Section 17301) of Chapter 3 and Chapter 11 (commencing with Section 17951).

SEC. 4. Section 17302 of the Revenue and Taxation Code is amended to read:

17302. In the case of a nonresident or part-year resident, the deduction provided by Section 215 of the Internal Revenue Code, relating to alimony payments, shall be allowed in computing ''taxable income of a nonresident or part-year resident'' in the same ratio (not to exceed 1.00) that California adjusted gross income (as defined in Section 17301.3), computed without regard to the alimony deduction, bears to total adjusted gross income (as defined in Section 17301.4), computed without regard to the alimony deduction.

SEC. 5. Section 19131 of the Revenue and Taxation Code is amended to read:

19131. (a) If any taxpayer fails to make and file a return required by this part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction thereof elapsing between the due date of the return (determined without regard to any extension of time for filing) and the date on which filed, but the total penalty may not exceed 25 percent of the tax. In the case of a commencing corporation, the penalty shall apply to all tax accruable on the due date of the return. The penalty so added to the tax shall be due and payable upon notice and demand from the Franchise Tax Board.

(b) In the case of an individual or fiduciary who fails to file a return of tax required by this part within 60 days of the date prescribed for filing of that return (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause and not due to willful neglect, this penalty may not be less than the lesser of one hundred dollars ($100) or 100 percent of the amount of tax required to be shown on the return.

(c) For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(d) If any failure to file any return is fraudulent, subdivision (a) shall be applied by:

(1) Substituting ''15 percent'' for ''5 percent,'' and

(2) Substituting ''75 percent'' for ''25 percent.''

(e) This section does not apply to any failure to pay any estimated tax required by Section 19025 or 19136.

(f) (1) The penalty described in this section is presumed not to apply if, with respect to the same taxable year, all of the following conditions are met:

(A) A taxpayer fails to make and file a return required by this part on or before the due date of the return, determined with regard to any

extension of time for filing, and fails to make and file a return required by Section 6012 of the Internal Revenue Code on or before the due date of the return, determined with regard to any extension of time for filing.

(B) The Franchise Tax Board proposes a deficiency assessment that is based upon a final federal determination.

(C) The Commissioner of Internal Revenue or other officer of the United States determines that the penalty described in Section 6651(a)(1) of the Internal Revenue Code does not apply because the failure to file the federal return on or before the date prescribed for its filing was due to reasonable cause and not due to willful neglect.

(2) The Franchise Tax Board may rebut the presumption described in paragraph (1) by establishing, by a preponderance of the evidence, that the taxpayer's failure to make and file a return required by this part was not due to reasonable cause or was due to willful neglect.

SEC. 6. Section 19136.11 is added to the Revenue and Taxation Code, to read:

19136.11. (a) No addition to tax shall be made under Section 19136 for any period before April 15, 2003, with respect to any underpayment of an installment for the 2002 taxable year, to the extent that the underpayment was created or increased by any provision of Chapter 920 of the Statutes of 2001.

(b) The Franchise Tax Board shall implement this section in a reasonable manner.

SEC. 7. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 14

An act to amend Section 1246 of the Business and Professions Code, and to amend Section 23158 of the Vehicle Code, relating to blood tests, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 11, 2004. Filed with Secretary of State February 11, 2004.]

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

SECTION 1. Section 1246 of the Business and Professions Code is amended to read:

1246. (a) Except as provided in subdivisions (b) and (c), and in Section 23158 of the Vehicle Code, an unlicensed person employed by a licensed clinical laboratory may perform venipuncture or skin puncture for the purpose of withdrawing blood or for clinical laboratory test

purposes upon specific authorization from a licensed physician and surgeon, provided that he or she meets both of the following requirements:

(1) He or she works under the supervision of a person licensed under this chapter or of a licensed physician and surgeon or of a licensed registered nurse. A person licensed under this chapter, a licensed physician or surgeon, or a registered nurse shall be physically available to be summoned to the scene of the venipuncture within five minutes during the performance of those procedures.

(2) He or she has been trained by a licensed physician and surgeon or by a clinical laboratory bioanalyst in the proper procedure to be employed when withdrawing blood in accordance with training requirements established by the State Department of Health Services and has a statement signed by the instructing physician and surgeon or by the instructing clinical laboratory bioanalyst that this training has been successfully completed.

(b) (1) On and after the effective date of the regulations specified in paragraph (2), any unlicensed person employed by a clinical laboratory performing the duties described in this section shall possess a valid and current certification as a ''certified phlebotomy technician'' issued by the department. However, an unlicensed person employed by a clinical laboratory to perform these duties pursuant to subdivision (a) on that date shall comply with this requirement by April 2006, which is three years from the effective date of the regulations.

(2) The department shall adopt regulations for certification by January 1, 2001, as a ''certified phlebotomy technician'' that shall include all of the following:

(A) The applicant shall hold a valid, current certification as a phlebotomist issued by a national accreditation agency approved by the department, and shall submit proof of that certification when applying for certification pursuant to this section.

(B) The applicant shall complete education, training, and experience requirements as specified by regulations that shall include, but not be limited to, the following:

(i) At least 40 hours of didactic instruction.

(ii) At least 40 hours of practical instruction.

(iii) At least 50 successful venipunctures.

However, an applicant who has been performing these duties pursuant to subdivision (a) may be exempted from the requirements specified in clauses (ii) and (iii), and from 20 hours of the 40 hours of didactic instruction as specified in clause (i), if he or she has at least 1,040 hours of work experience, as specified in regulations adopted by the department.

It is the intent of the Legislature to permit persons performing these duties pursuant to subdivision (a) to use educational leave provided by their employers for purposes of meeting the requirements of this section.

(3) Each ''certified phlebotomy technician'' shall complete at least three hours per year or six hours every two years of continuing education or training. The department shall consider a variety of programs in determining the programs that meet the continuing education or training requirement.

(4) He or she has been found to be competent in phlebotomy by a licensed physician and surgeon or person licensed pursuant to this chapter.

(5) He or she works under the supervision of a licensed physician and surgeon, licensed registered nurse, or person licensed under this chapter, or the designee of a licensed physician and surgeon or the designee of a person licensed under this chapter.

(6) The department shall adopt regulations establishing standards for approving training programs designed to prepare applicants for certification pursuant to this section. The standards shall ensure that these programs meet the state's minimum education and training requirements for comparable programs.

(7) The department shall adopt regulations establishing standards for approving national accreditation agencies to administer certification examinations and tests pursuant to this section.

(8) The department shall charge fees for application for and renewal of the certificate authorized by this section of no more than twenty-five dollars ($25).

(c) (1) Notwithstanding any other provision of law, a person who has been issued a ''certified phlebotomy technician'' certificate pursuant to this section may draw blood following policies and procedures approved by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000), appropriate to the location where the blood is being drawn and in accordance with state regulations. The blood collection shall be done at the request and in the presence of a peace officer for forensic purposes in a jail, law enforcement facility, or medical facility, with general supervision.

(2) As used in this subdivision, ''general supervision'' means that the supervisor of the technician is licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, and reviews the competency of the technician before the technician may perform blood withdrawals without direct supervision, and on an annual basis thereafter. The supervisor is also required to review the work of the technician at least once a month to ensure compliance with venipuncture policies, procedures, and regulations. The supervisor, or another person licensed

under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, shall be accessible to the location where the technician is working to provide onsite, telephone, or electronic consultation, within 30 minutes when needed.

(d) The department may adopt regulations providing for the issuance of a certificate to an unlicensed person employed by a clinical laboratory authorizing only the performance of skin punctures for test purposes.

SEC. 1.5. Section 1246 of the Business and Professions Code is amended to read:

1246. (a) Except as provided in subdivisions (b) and (c), and in Section 23158 of the Vehicle Code, an unlicensed person employed by a licensed clinical laboratory may perform venipuncture or skin puncture for the purpose of withdrawing blood or for clinical laboratory test purposes upon specific authorization from a licensed physician and surgeon provided that he or she meets both of the following requirements:

(1) He or she works under the supervision of a person licensed under this chapter or of a licensed physician and surgeon or of a licensed registered nurse. A person licensed under this chapter, a licensed physician or surgeon, or a registered nurse shall be physically available to be summoned to the scene of the venipuncture within five minutes during the performance of those procedures.

(2) He or she has been trained by a licensed physician and surgeon or by a clinical laboratory bioanalyst in the proper procedure to be employed when withdrawing blood in accordance with training requirements established by the State Department of Health Services and has a statement signed by the instructing physician and surgeon or by the instructing clinical laboratory bioanalyst that such training has been successfully completed.

(b) (1) On and after the effective date of the regulations specified in paragraph (2), any unlicensed person employed by a clinical laboratory performing the duties described in this section shall possess a valid and current certification as a ''certified phlebotomy technician'' issued by the department. However, an unlicensed person employed by a clinical laboratory to perform these duties pursuant to subdivision (a) on that date shall comply with this requirement by April 2006, which is three years from the effective date of those regulations.

(2) The department shall adopt regulations for certification by January 1, 2001, as a ''certified phlebotomy technician'' that shall include all of the following:

(A) The applicant shall hold a valid, current certification as a phlebotomist issued by a national accreditation agency approved by the

department, and shall submit proof of that certification when applying for certification pursuant to this section.

(B) The applicant shall complete education, training, and experience requirements as specified by regulations that shall include, but not be limited to, the following:

(i) At least 40 hours of didactic instruction.

(ii) At least 40 hours of practical instruction.

(iii) At least 50 successful venipunctures.

However, an applicant who has been performing these duties pursuant to subdivision (a) may be exempted from the requirements specified in clauses (ii) and (iii), and from 20 hours of the 40 hours of didactic instruction as specified in clause (i), if he or she has at least 1,040 hours of work experience, as specified in regulations adopted by the department.

It is the intent of the Legislature to permit persons performing these duties pursuant to subdivision (a) to use educational leave provided by their employers for purposes of meeting the requirements of this section.

(3) Each ''certified phlebotomy technician'' shall complete at least three hours per year or six hours every two years of continuing education or training. The department shall consider a variety of programs in determining the programs that meet the continuing education or training requirement.

(4) He or she has been found to be competent in phlebotomy by a licensed physician and surgeon or person licensed pursuant to this chapter.

(5) He or she works under the supervision of a licensed physician and surgeon, licensed registered nurse, or person licensed under this chapter, or the designee of a licensed physician and surgeon or the designee of a person licensed under this chapter.

(6) The department shall adopt regulations establishing standards for approving training programs designed to prepare applicants for certification pursuant to this section. The standards shall ensure that these programs meet the state's minimum education and training requirements for comparable programs.

(7) The department shall adopt regulations establishing standards for approving national accreditation agencies to administer certification examinations and tests pursuant to this section.

(8) The department shall charge fees for application for and renewal of the certificate authorized by this section of no more than twenty-five dollars ($25).

(c) (1) (A) A ''certified phlebotomy technician'' may perform venipuncture or skin puncture to obtain a specimen for nondiagnostic tests assessing the health of an individual, for insurance purposes provided that the technician works under the general supervision of a

physician and surgeon licensed under Chapter 5 (commencing with Section 2000). The physician and surgeon may delegate the general supervision duties to a registered nurse or a person licensed under this chapter, but shall remain responsible for ensuring that all those duties and responsibilities are properly performed. The physician and surgeon shall make available to the department, upon request, records maintained documenting when a certified phlebotomy technician has performed venipuncture or skin puncture pursuant to this paragraph.

(B) As used in this paragraph, general supervision requires the supervisor of the technician to determine that the technician is competent to perform venipuncture or skin puncture prior to the technician's first blood withdrawal, and on an annual basis thereafter. The supervisor is also required to determine, on a monthly basis, that the technician complies with appropriate venipuncture or skin puncture policies and procedures approved by the medical director and required by state regulations. The supervisor, or another designated licensed physician and surgeon, registered nurse, or person licensed under this chapter, shall be available for consultation with the technician, either in person or through telephonic or electronic means, at the time of blood withdrawal.

(2) (A) Notwithstanding any other provision of law, a person who has been issued a "certified phlebotomy technician" certificate pursuant to this section may draw blood following policies and procedures approved by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000), appropriate to the location where the blood is being drawn and in accordance with state regulations. The blood collection shall be done at the request and in the presence of a peace officer for forensic purposes in a jail, law enforcement facility, or medical facility, with general supervision.

(B) As used in this paragraph, "general supervision" means that the supervisor of the technician is licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, and reviews the competency of the technician before the technician may perform blood withdrawals without direct supervision, and on an annual basis thereafter. The supervisor is also required to review the work of the technician at least once a month to ensure compliance with venipuncture policies, procedures, and regulations. The supervisor, or another person licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, shall be accessible to the location where the technician is working to provide onsite, telephone, or electronic consultation, within 30 minutes when needed.

(d) The department may adopt regulations providing for the issuance of a certificate to an unlicensed person employed by a clinical laboratory authorizing only the performance of skin punctures for test purposes.

SEC. 2. Section 23158 of the Vehicle Code is amended to read:

23158. (a) Notwithstanding any other provision of law, only a licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, a person who has been issued a ''certified phlebotomy technician'' certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of breath specimens. An emergency call for paramedic services takes precedence over a peace officer's request for a paramedic to withdraw blood for determining its alcoholic content. A certified paramedic shall not withdraw blood for this purpose unless authorized by his or her employer to do so.

(b) The person tested may, at his or her own expense, have a licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, person who has been issued a ''certified phlebotomy technician'' certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or any other person of his or her own choosing administer a test in addition to any test administered at the direction of a peace officer for the purpose of determining the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of his or her blood, breath, or urine. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(c) Upon the request of the person tested, full information concerning the test taken at the direction of the peace officer shall be made available to the person or the person's attorney.

(d) Notwithstanding any other provision of law, no licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, person who has been issued a ''certified phlebotomy technician'' certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, or hospital, laboratory, or clinic employing or utilizing the services of the licensed physician and surgeon, registered

nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, person who has been issued a "certified phlebotomy technician" certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, owning or leasing the premises on which tests are performed, shall incur any civil or criminal liability as a result of the administering of a blood test in a reasonable manner in a hospital, clinical laboratory, medical clinic environment, jail, or law enforcement facility, according to accepted venipuncture practices, without violence by the person administering the test, and when requested in writing by a peace officer to administer the test.

(e) Notwithstanding any other provision of law, a person who has been issued a ''certified phlebotomy technician'' certificate pursuant to Section 1246 of the Business and Professions Code and who is authorized by this section to draw blood at the request and in the presence of a peace officer for purposes of determining its alcoholic content, may do so in a jail, law enforcement facility, or medical facility, with general supervision. The ''certified phlebotomy technician'' shall draw blood following the policies and procedures approved by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, appropriate to the location where the blood is being drawn and in accordance with state regulations.

(f) The Certified Phlebotomy Technician I or II shall carry a current, valid identification card issued by the State Department of Health Services, attesting to the technician's name, certificate type, and effective dates of certification, when performing blood withdrawals.

(g) As used in this section, ''general supervision'' means that the supervisor of the technician is licensed under the Business and Professions Code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, and reviews the competency of the technician before the technician may perform blood withdrawals without direct supervision, and on an annual basis thereafter. The supervisor is also required to review the work of the technician at least once a month to ensure compliance with venipuncture policies, procedures, and regulations. The supervisor, or another person licensed as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, shall be accessible to the location where the technician is working to provide onsite, telephone, or electronic consultation, within 30 minutes when needed.

(h) Nothing in this section shall be construed as requiring the certified phlebotomy technician who is authorized to withdraw blood by this

section at the request and in the presence of a peace officer for purposes of determining alcoholic content to be associated with a clinical laboratory or to be directly supervised after competency has been established.

(i) If the test given under Section 23612 is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will ensure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(j) The department, in cooperation with the State Department of Health Services or any other appropriate agency, shall adopt uniform standards for the withdrawal, handling, and preservation of blood samples prior to analysis.

(k) As used in this section, ''certified paramedic'' does not include any employee of a fire department.

(*l*) Consent, waiver of liability, or the offering to, acceptance by, or refusal of consent or waiver of liability by the person on whom a test is administered, is not an issue or relevant to the immunity from liability for medical or law enforcement personnel or other facilities designated under subdivision (d).

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1246 of the Business and Professions Code proposed by both this bill and AB 1087. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 1246 of the Business and Professions Code, and (3) this bill is enacted after AB 1087, in which case Section 1 of this bill shall not become operative.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to take effect as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 15

An act relating to the support of state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 20, 2004. Filed with Secretary of State February 23, 2004.]

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

SECTION 1. Notwithstanding any other provision of law, five million seven hundred thirteen thousand dollars ($5,713,000) is reverted to the Harbors and Watercraft Revolving Fund from the amount appropriated in Item 3680-101-0516, Schedule (3), of Section 2.00 of the Budget Act of 2002 (Chapter 379 of the Statutes of 2002). The Controller shall transfer this amount, upon the order of the Director of Finance, to the Public Beach Restoration Fund, for expenditure by the Department of Boating and Waterways for the purposes of the California Public Beach Restoration Act (Article 2.6 (commencing with Section 69.5) of Chapter 2 of Division 1 of the Harbors and Navigation Code).

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

This act makes appropriations and contains related provisions for support of state and local government for the 2002–03 fiscal year. It is therefore necessary that this act go into immediate effect.

CHAPTER 16

An act to amend Section 1091 of the Government Code, relating to conflicts of interest, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 20, 2004. Filed with Secretary of State February 23, 2004.]

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 entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) or 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.

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

In order to ensure that nonprofit entities exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code are included within the definition of remote interest, it is necessary that this act take effect immediately.

CHAPTER 17

An act to amend Sections 1789.31, 1789.33, and 1789.35 of, to amend, repeal, and add Sections 1789.30 and 1789.37 of, and to add and repeal Section 1789.39 of, the Civil Code, and to amend Sections 22050, 23026, 23057, 23100, 23102, and 23104 of, and to add and repeal Section 23100.1 of, the Financial Code, relating to deferred deposit transactions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 20, 2004. Filed with Secretary of State February 23, 2004.]

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

SECTION 1. Section 1789.30 of the Civil Code is amended to read:

1789.30. (a) Every check casher, as applicable to the services provided, shall post a complete, detailed, and unambiguous schedule of all fees for (1) cashing checks, drafts, money orders, or other commercial paper serving the same purpose and making any deferred deposit thereof, (2) the sale or issuance of money orders, and (3) the initial issuance of any identification card. Each check casher shall also post a list of valid identification which is acceptable in lieu of identification provided by the check casher. The information required by this section shall be clear, legible, and in letters not less than one-half inch in height. The

information shall be posted in a conspicuous location in the unobstructed view of the public within the check casher's premises.

(b) This section shall become inoperative on December 31, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 1789.30 is added to the Civil Code, to read:

1789.30. (a) Every check casher, as applicable to the services provided, shall post a complete, detailed, and unambiguous schedule of all fees for (1) cashing checks, drafts, money orders, or other commercial paper serving the same purpose, (2) the sale or issuance of money orders, and (3) the initial issuance of any identification card. Each check casher shall also post a list of valid identification which is acceptable in lieu of identification provided by the check casher. The information required by this section shall be clear, legible, and in letters not less than one-half inch in height. The information shall be posted in a conspicuous location in the unobstructed view of the public within the check casher's premises.

(b) This section shall become operative December 31, 2004.

SEC. 3. Section 1789.31 of the Civil Code, as amended by Section 2 of Chapter 777 of the Statutes of 2002, is amended to read:

1789.31. (a) As used in this title, a ''check casher'' means a person or entity that for compensation engages, in whole or in part, in the business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. ''Check casher'' does not include a state or federally chartered bank, savings association, credit union, or industrial loan company. ''Check casher'' also does not include a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cashes checks or issues money orders for a minimum flat fee not exceeding two dollars ($2) as a service to its customers that is incidental to its main purpose or business.

(b) As used in this title, ''deferred deposit'' means a transaction whereby the check casher refrains from depositing a personal check written by a customer until a specific date, pursuant to a written agreement, as provided in Section 1789.33.

(c) This section shall become inoperative on December 31, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 1789.31 of the Civil Code, as added by Section 3 of Chapter 777 of the Statutes of 2002, is amended to read:

1789.31. (a) As used in this title, a ''check casher'' means a person or entity that for compensation engages, in whole or in part, in the

business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. ''Check casher'' does not include a state or federally chartered bank, savings association, credit union, or industrial loan company. ''Check casher'' also does not include a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cashes checks or issues money orders for a fee not exceeding two dollars ($2) as a service to its customers that is incidental to its main purpose or business.

(b) This section shall become operative December 31, 2004.

SEC. 5. Section 1789.33 of the Civil Code is amended to read:

1789.33. (a) A check casher may defer the deposit of a personal check written by a customer for up to 30 days, pursuant to the provisions of this section. The face amount of the check shall not exceed three hundred dollars ($300). Each deferred deposit shall be made pursuant to a written agreement that has been signed by the customer and by the check casher or an authorized representative of the check casher. The written agreement shall contain a statement of the total amount of any fees charged for the deferred deposit, expressed both in United States currency and as an annual percentage rate (APR). The written agreement shall authorize the check casher to defer deposit of the personal check until a specific date not later than 30 days from the date the written agreement was signed and executed. The written agreement shall not permit the check casher to accept collateral.

(b) A customer who enters into a deferred deposit agreement and offers a personal check to a check casher pursuant to that agreement shall not be subject to any criminal penalty for the failure to comply with the terms of that agreement.

(c) This section shall become inoperative on December 31, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 1789.35 of the Civil Code, as amended by Section 5 of Chapter 777 of the Statutes of 2002, is amended to read:

1789.35. (a) A check casher shall not charge a fee for cashing a payroll check or government check in excess of 3 percent if identification is provided by the customer, or 3.5 percent without the provision of identification, of the face amount of the check, or three dollars ($3), whichever is greater. Identification, for purposes of this section, is limited to a California driver's license, a California identification card, or a valid United States military identification card.

(b) A check casher may charge a fee of no more than ten dollars ($10) to set up an initial account and issue an optional identification card for providing check cashing services. A replacement optional identification card may be issued at a cost not to exceed five dollars ($5).

(c) A check casher shall provide a receipt to the customer for each transaction.

(d) Subject to the limitations of Section 1789.33, a check casher may charge a fee for cashing a personal check, as posted pursuant to Section 1789.30, for immediate deposit in an amount not to exceed 12 percent of the face value of the check or for deferred deposit in an amount not to exceed 15 percent of the face value of the check.

(e) A check casher shall not enter into an agreement for a deferred deposit with a customer during the period of time that an earlier written agreement for a deferred deposit for the same customer is in effect.

(f) A check casher who enters into a deferred deposit agreement and accepts a check passed on insufficient funds, or any assignee of that check casher, shall not be entitled to recover damages in any action brought pursuant to, or governed by, Section 1719.

(g) For a transaction pursuant to Section 1789.33, a fee not to exceed fifteen dollars ($15) may be charged for the return of a dishonored check by a depositary institution. The fee may be collected by a check casher who holds a valid permit issued pursuant to Section 1789.37, when acting under the authority of that permit.

(h) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a check casher pursuant to a deferred deposit agreement.

(i) Any person who violates any provision of this section shall be liable for a civil penalty not to exceed two thousand dollars ($2,000) 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. Any action brought pursuant to this subdivision shall be commenced within four years of the date on which the act or transaction upon which the action is based occurred.

(j) A willful violation of this section is a misdemeanor.

(k) Any person who is injured by any violation of this section may bring an action for the recovery of damages, an equity proceeding to restrain and enjoin those violations, or both. The amount awarded may be up to three times the damages actually incurred, but in no event less than the amount paid by the aggrieved consumer to a person subject to this section. If the plaintiff prevails, the plaintiff shall be awarded reasonable attorney's fees and costs. If a court determines by clear and convincing evidence that a breach or violation was willful, the court, in its discretion, may award punitive damages in addition to the amounts set forth above.

(*l*) This section shall become inoperative on December 31, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is

enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 1789.35 of the Civil Code, as added by Section 6 of Chapter 777 of the Statutes of 2002, is amended to read:

1789.35. (a) A check casher shall not charge a fee for cashing a payroll check or government check in excess of 3 percent if identification is provided by the customer, or 3.5 percent without the provision of identification, of the face amount of the check, or three dollars ($3), whichever is greater. Identification, for purposes of this section, is limited to a California driver's license, a California identification card, or a valid United States military identification card.

(b) (1) A check casher may charge a fee of no more than ten dollars ($10) to set up an initial account and issue an optional identification card for providing check cashing services. A replacement optional identification card may be issued at a cost not to exceed five dollars ($5).

(2) Notwithstanding the provisions of paragraph (1), commencing March 15, 2004, no check casher shall charge the fee authorized in paragraph (1) or any similar or related fee for deferred deposit transactions.

(c) A check casher shall provide a receipt to the customer for each transaction.

(d) A check casher may charge a fee for cashing a personal check, as posted pursuant to Section 1789.30, for immediate deposit in an amount not to exceed 12 percent of the face value of the check.

(e) Any person who violates any provision of this section shall be liable for a civil penalty not to exceed two thousand dollars ($2,000) 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. Any action brought pursuant to this subdivision shall be commenced within four years of the date on which the act or transaction upon which the action is based occurred.

(f) A willful violation of this section is a misdemeanor.

(g) Any person who is injured by any violation of this section may bring an action for the recovery of damages, an equity proceeding to restrain and enjoin those violations, or both. The amount awarded may be up to three times the damages actually incurred, but in no event less than the amount paid by the aggrieved consumer to a person subject to this section. If the plaintiff prevails, the plaintiff shall be awarded reasonable attorney's fees and costs. If a court determines by clear and convincing evidence that a breach or violation was willful, the court, in its discretion, may award punitive damages in addition to the amounts set forth above.

(h) This section shall become operative December 31, 2004.

SEC. 8. Section 1789.37 of the Civil Code is amended to read:

1789.37. (a) Every owner of a check casher's business shall obtain a permit from the Department of Justice to conduct a check casher's business.

(b) All applications for a permit to conduct a check casher's business shall be filed with the department in writing, signed by the applicant if an individual or by a member or officer authorized to sign if the applicant is a corporation or other entity, and shall state the name of the business, the type of business engaged in, whether the applicant intends to enter into deferred deposit agreements, and the business address. Each applicant shall be fingerprinted.

(c) Each applicant for a permit to conduct a check casher's business shall pay a fee not to exceed the cost of processing the application, fingerprinting the applicant, and checking or obtaining the criminal record of the applicant, at the time of filing the application.

(d) Each applicant shall annually, beginning one year from the date of issuance of a check casher's permit, file an application for renewal of the permit with the department, along with payment of a renewal fee not to exceed the cost of processing the application for renewal and checking or obtaining the criminal record of the applicant.

(e) The department shall deny an application for a permit to conduct a check casher's business, or for renewal of a permit, if the applicant has a felony conviction involving dishonesty, fraud, or deceit, provided the crime is substantially related to the qualifications, functions, or duties of a person engaged in the business of check cashing.

(f) The department shall adopt regulations to implement this section, and shall determine the amount of the application fees required by this section. The department shall prescribe forms for the applications and permit required by this section, which shall be uniform throughout the state.

(g) In any action brought by a city attorney or district attorney to enforce a violation of this section, any owner of a check casher's business who engages in the business of check cashing without holding a current and valid permit issued by the department pursuant to this section is subject to a civil penalty, as follows:

(1) For the first offense, not more than one thousand dollars ($1,000).

(2) For the second offense, not more than five thousand dollars ($5,000).

(h) Any person who has twice been found in violation of subdivision (g) and who, within 10 years of the date of the first offense, engages in the business of check cashing without holding a current and valid permit issued by the department pursuant to this section is guilty of a misdemeanor punishable by imprisonment in the county jail not

exceeding six months, or by a fine not exceeding five thousand dollars ($5,000), or by both.

(i) All civil penalties, forfeited bail, or fines received by any court pursuant to this section shall, as soon as practicable after the receipt thereof, be deposited with the county treasurer of the county in which the court is situated. Fines and forfeitures so deposited shall be disbursed pursuant to the Penal Code. Civil penalties so deposited shall be paid at least once a month as follows:

(1) Fifty percent to the Treasurer by warrant of the county auditor drawn upon the requisition of the clerk or judge of the court, to be deposited in the State Treasury on order of the Controller.

(2) Fifty percent to the city treasurer of the city, if the offense occurred in a city, otherwise to the treasurer of the county in which the prosecution is conducted.

Any money deposited in the State Treasury under this section which is determined by the Controller to have been erroneously deposited therein shall be refunded, subject to approval of the State Board of Control prior to the payment of the refund, out of any money in the State Treasury which is available by law for that purpose.

(j) This section shall become inoperative on December 31, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 1789.37 is added to the Civil Code, to read:

1789.37. (a) Every owner of a check casher's business shall obtain a permit from the Department of Justice to conduct a check casher's business.

(b) All applications for a permit to conduct a check casher's business shall be filed with the department in writing, signed by the applicant if an individual or by a member or officer authorized to sign if the applicant is a corporation or other entity, and shall state the name of the business, the type of business engaged in, and the business address. Each applicant shall be fingerprinted.

(c) Each applicant for a permit to conduct a check casher's business shall pay a fee not to exceed the cost of processing the application, fingerprinting the applicant, and checking or obtaining the criminal record of the applicant, at the time of filing the application.

(d) Each applicant shall annually, beginning one year from the date of issuance of a check casher's permit, file an application for renewal of the permit with the department, along with payment of a renewal fee not to exceed the cost of processing the application for renewal and checking or obtaining the criminal record of the applicant.

(e) The department shall deny an application for a permit to conduct a check casher's business, or for renewal of a permit, if the applicant has

a felony conviction involving dishonesty, fraud, or deceit, provided the crime is substantially related to the qualifications, functions, or duties of a person engaged in the business of check cashing.

(f) The department shall adopt regulations to implement this section and shall determine the amount of the application fees required by this section. The department shall prescribe forms for the applications and permit required by this section, which shall be uniform throughout the state.

(g) In any action brought by a city attorney or district attorney to enforce a violation of this section, any owner of a check casher's business who engages in the business of check cashing without holding a current and valid permit issued by the department pursuant to this section is subject to a civil penalty, as follows:

(1) For the first offense, not more than one thousand dollars ($1,000).

(2) For the second offense, not more than five thousand dollars ($5,000).

(h) Any person who has twice been found in violation of subdivision (g) and who, within 10 years of the date of the first offense, engages in the business of check cashing without holding a current and valid permit issued by the department pursuant to this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding five thousand dollars ($5,000), or by both.

(i) All civil penalties, forfeited bail, or fines received by any court pursuant to this section shall, as soon as practicable after the receipt thereof, be deposited with the county treasurer of the county in which the court is situated. Fines and forfeitures so deposited shall be disbursed pursuant to the Penal Code. Civil penalties so deposited shall be paid at least once a month as follows:

(1) Fifty percent to the Treasurer by warrant of the county auditor drawn upon the requisition of the clerk or judge of the court, to be deposited in the State Treasury on order of the Controller.

(2) Fifty percent to the city treasurer of the city, if the offense occurred in a city, otherwise to the treasurer of the county in which the prosecution is conducted. Any money deposited in the State Treasury under this section which is determined by the Controller to have been erroneously deposited therein shall be refunded, subject to approval of the State Board of Control prior to the payment of the refund, out of any money in the State Treasury which is available by law for that purpose.

(j) This section shall become operative December 31, 2004.

SEC. 10. Section 1789.39 is added to the Civil Code, to read:

1789.39. (a) Check cashers that hold a valid deferred deposit permit issued by the Department of Justice with an expiration date of February

29, 2004, shall have their current permits extended by the Department of Justice through December 31, 2004, without any fees or application.

(b) This section shall become inoperative on December 31, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 11. Section 22050 of the Financial Code, as amended by Section 8 of Chapter 777 of the Statutes of 2002, is amended to read:

22050. (a) This division does not apply to any person doing business under any law of this state or of the United States relating to banks, trust companies, savings and loan associations, insurance premium finance agencies, credit unions, small business investment companies, California business and industrial development corporations, or licensed pawnbrokers.

(b) This division does not apply to a broker-dealer acting pursuant to a certificate, then in effect, issued pursuant to Section 25211 of the Corporations Code.

(c) This division does not apply to a college or university making a loan for the purpose of permitting a person to pursue a program or course of study leading to a degree or certificate.

(d) This division does not apply to a check casher who holds a valid permit issued pursuant to Section 1789.37 of the Civil Code when acting under the authority of that permit.

(e) This division does not apply to any person who makes no more than one loan in a 12-month period as long as that loan is a commercial loan as defined in Section 22502.

(f) This division does not apply to any public corporation as defined in Section 67510 of the Government Code, any public entity other than the state as defined in Section 811.2 of the Government Code, or any agency of any one or more of the foregoing, when making any loan so long as the public corporation, public entity, or agency of any one or more of the foregoing complies with all applicable federal and state laws and regulations.

(g) This section shall become inoperative on December 31, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. Section 22050 of the Financial Code, as added by Section 9 of Chapter 777 of the Statutes of 2002, is amended to read:

22050. (a) This division does not apply to any person doing business under any law of this state or of the United States relating to banks, trust companies, savings and loan associations, insurance premium finance agencies, credit unions, small business investment

companies, California business and industrial development corporations, or licensed pawnbrokers.

(b) This division does not apply to a check casher who holds a valid permit issued pursuant to Section 1789.37 of the Civil Code when acting under the authority of that permit, and shall not apply to a person holding a valid license issued pursuant to Section 23005 of the Financial Code when acting under the authority of that license.

(c) This division does not apply to a college or university making a loan for the purpose of permitting a person to pursue a program or course of study leading to a degree or certificate.

(d) This division does not apply to a broker-dealer acting pursuant to a certificate then in effect and issued pursuant to Section 25211 of the Corporations Code.

(e) This division does not apply to any person who makes no more than one loan in a 12-month period as long as that loan is a commercial loan as defined in Section 22502.

(f) This division does not apply to any public corporation as defined in Section 67510 of the Government Code, any public entity other than the state as defined in Section 811.2 of the Government Code, or any agency of any one or more of the foregoing, when making any loan so long as the public corporation, public entity, or agency of any one or more of the foregoing complies with all applicable federal and state laws and regulations.

(g) This section shall become operative December 31, 2004.

SEC. 13. Section 23100.1 is added to the Financial Code, to read:

23100.1. (a) Check cashers that hold a valid deferred deposit permit issued by the Department of Justice with an expiration date of February 29, 2004, shall have their current permits extended by the Department of Justice through December 31, 2004, without any fees or application.

(b) This section shall become inoperative on December 31, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 14. Section 23026 of the Financial Code is amended to read:

23026. On or before March 15 of each year, beginning March 2006, each licensee shall file an annual report with the commissioner pursuant to procedures that the commissioner shall establish. The licensee's annual report shall be kept confidential pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and any regulations adopted thereunder. The annual consolidated report shall be prepared by the commissioner and made available to the public. For the previous calendar year, these reports shall include the following:

(a) The total number and dollar amount of deferred deposit transactions made by the licensee.

(b) The total number of individual customers who entered into deferred deposit transactions.

(c) The minimum, maximum, and average amount of deferred deposit transactions.

(d) The average annual percentage rate of deferred deposits.

(e) The average number of days of deferred deposit transactions.

(f) The total number and dollar amount of returned checks.

(g) The total number and dollar amount of checks recovered.

(h) The total number and dollar amount of checks charged off.

SEC. 15. Section 23057 of the Financial Code is amended to read:

23057. On December 1, 2007, the commissioner shall report to the Governor and the Legislature on its implementation of this division. The report shall include, at a minimum, information regarding the demand for deferred deposit transactions, the growth and trends in the industry, common practices for conducting the business of deferred deposit transactions and any other information the commissioner deems necessary to inform the Governor and the Legislature regarding potential legislation that may be necessary to protect the people of the State of California. The commissioner's recommendations for future action may include, but are not limited to, changes in the fees charged to consumers, specifications regarding the length of time for deferred deposit transactions, maximum amount provided to consumers and the implementation of an installment loan product in lieu of a deferred deposit transaction as described in this division.

As the commissioner conducts this study, licensees shall be required to supply all information the commissioner deems necessary. The study shall be made public and may not include any proprietary information.

SEC. 16. Section 23100 of the Financial Code is amended to read:

23100. (a) Check cashers that hold a valid permit prior to January 1, 2003, issued pursuant to Section 1789.37 of the Civil Code, and that have been making deferred deposits prior to January 1, 2003, shall do the following prior to engaging in the business of deferred deposits on or after December 31, 2004:

(1) Pay the assessment on or before May 15, 2003, pursuant to the provisions of this division for the 2003–04 fiscal year. The fees and assessments paid pursuant to this subdivision shall be nonrefundable.

(2) On or before May 15, 2003, submit a license application and pay a license fee pursuant to Article 2 (commencing with Section 23005).

(b) Any person that intends to engage in the business of deferred deposits after December 31, 2004, and that holds a check cashing permit from the Attorney General on or before January 2003 and fails to submit a license application or pay a license fee as provided in this subdivision,

shall upon the request of the commissioner and applying for a license forfeit to the people of the state a sum of twenty-five dollars ($25) for every day or part of a day that the submission or payment is delayed or withheld. Applications will be processed in the order of the date received by the commissioner. Applications submitted prior to December 31, 2004, shall not be subject to subdivision (c) of Section 23011.

(c) The commissioner shall issue a license to a licensee under this division upon receiving payment of the assessment for the 2003–04 fiscal year, the license application, and fee and any additional information the commissioner may require in the application to demonstrate compliance with provisions of this division. The amount collected shall be deposited in the State Corporations Fund and shall be subject to appropriation by the Legislature for the 2003–04 fiscal year.

SEC. 17. Section 23102 of the Financial Code is amended to read:

23102. The deferred deposits made pursuant to a permit issued under Section 1789.37 of the Civil Code prior to December 31, 2004, shall be subject to and enforced to the extent valid under Sections 1789.30 to 1789.37, inclusive, of the Civil Code, as if those sections were not repealed. Any regulation, order, or other action adopted, prescribed, taken, or performed by the Department of Justice or by an officer of that department in connection with deferred deposit transactions made prior to December 31, 2004, shall continue to apply to those transactions. No suit, action, or other proceeding lawfully commenced by or against the Department of Justice or any other officer of the state in relation to deferred deposit transactions made prior to December 31, 2004, shall abate by reason of the transfer of authority concerning deferred deposit transactions to the Department of Corporations pursuant to Section 23071.

SEC. 18. Section 23104 of the Financial Code is amended to read:

23104. Except as provided in this article, the provisions of this division shall become effective on January 1, 2003, and shall become operative on December 31, 2004. However, the commissioner shall have the power and authority to implement the provisions of this division prior to December 31, 2004.

SEC. 19. It is the intent of the Legislature that the Department of Corporations fully and rapidly implement the provisions of the California Deferred Deposit Transaction Law. The Legislature finds and declares that the California Deferred Deposit Transaction Law contains numerous, important consumer protections that must be fully and fairly implemented as rapidly as possible. The Legislature also finds and declares that some 1800 businesses have filed applications to obtain the license required by the California Deferred Deposit Transaction Law and have paid the required fees for the processing of their applications. Therefore, the Department of Corporations and all other agencies shall

expend all necessary resources, including existing resources that may be redirected, to guarantee comprehensive implementation of the law at the earliest practicable date.

SEC. 20. Notwithstanding the December 31, 2004 operative and inoperative dates specified in this act, the provisions of this act may become operative and inoperative on an earlier date established by an executive order issued by the Governor if that date is not less than 30 days after the issuance of the executive order.

SEC. 21. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide adequate time for the provisions of this act to be implemented, it is necessary that this act take effect immediately.

CHAPTER 18

An act to amend Section 1246 of the Business and Professions Code, relating to venipuncture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 20, 2004. Filed with Secretary of State February 23, 2004.]

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

SECTION 1. Section 1246 of the Business and Professions Code is amended to read:

1246. (a) Except as provided in subdivisions (b) and (c), and in Section 23158 of the Vehicle Code, an unlicensed person employed by a licensed clinical laboratory may perform venipuncture or skin puncture for the purpose of withdrawing blood or for clinical laboratory test purposes upon specific authorization from a licensed physician and surgeon provided that he or she meets both of the following requirements:

(1) He or she works under the supervision of a person licensed under this chapter or of a licensed physician and surgeon or of a licensed registered nurse. A person licensed under this chapter, a licensed physician or surgeon, or a registered nurse shall be physically available to be summoned to the scene of the venipuncture within five minutes during the performance of those procedures.

(2) He or she has been trained by a licensed physician and surgeon or by a clinical laboratory bioanalyst in the proper procedure to be

employed when withdrawing blood in accordance with training requirements established by the State Department of Health Services and has a statement signed by the instructing physician and surgeon or by the instructing clinical laboratory bioanalyst that such training has been successfully completed.

(b) (1) On and after the effective date of the regulations specified in paragraph (2), any unlicensed person employed by a clinical laboratory performing the duties described in this section shall possess a valid and current certification as a ''certified phlebotomy technician'' issued by the department. However, an unlicensed person employed by a clinical laboratory to perform these duties pursuant to subdivision (a) on that date shall comply with this requirement by April 2006, which is three years from the effective date of those regulations.

(2) The department shall adopt regulations for certification by January 1, 2001, as a ''certified phlebotomy technician'' that shall include all of the following:

(A) The applicant shall hold a valid, current certification as a phlebotomist issued by a national accreditation agency approved by the department, and shall submit proof of that certification when applying for certification pursuant to this section.

(B) The applicant shall complete education, training, and experience requirements as specified by regulations that shall include, but not be limited to, the following:

(i) At least 40 hours of didactic instruction.

(ii) At least 40 hours of practical instruction.

(iii) At least 50 successful venipunctures.

However, an applicant who has been performing these duties pursuant to subdivision (a) may be exempted from the requirements specified in clauses (ii) and (iii), and from 20 hours of the 40 hours of didactic instruction as specified in clause (i), if he or she has at least 1,040 hours of work experience, as specified in regulations adopted by the department.

It is the intent of the Legislature to permit persons performing these duties pursuant to subdivision (a) to use educational leave provided by their employers for purposes of meeting the requirements of this section.

(3) Each ''certified phlebotomy technician'' shall complete at least three hours per year or six hours every two years of continuing education or training. The department shall consider a variety of programs in determining the programs that meet the continuing education or training requirement.

(4) He or she has been found to be competent in phlebotomy by a licensed physician and surgeon or person licensed pursuant to this chapter.

(5) He or she works under the supervision of a licensed physician and surgeon, licensed registered nurse, or person licensed under this chapter, or the designee of a licensed physician and surgeon or the designee of a person licensed under this chapter.

(6) The department shall adopt regulations establishing standards for approving training programs designed to prepare applicants for certification pursuant to this section. The standards shall ensure that these programs meet the state's minimum education and training requirements for comparable programs.

(7) The department shall adopt regulations establishing standards for approving national accreditation agencies to administer certification examinations and tests pursuant to this section.

(8) The department shall charge fees for application for and renewal of the certificate authorized by this section of no more than twenty-five dollars ($25).

(c) (1) A ''certified phlebotomy technician'' may perform venipuncture or skin puncture to obtain a specimen for nondiagnostic tests assessing the health of an individual, for insurance purposes, provided that the technician works under the general supervision of a physician and surgeon licensed under Chapter 5 (commencing with Section 2000). The physician and surgeon may delegate the general supervision duties to a registered nurse or a person licensed under this chapter, but shall remain responsible for ensuring that all those duties and responsibilities are properly performed. The physician and surgeon shall make available to the department, upon request, records maintained documenting when a certified phlebotomy technician has performed venipuncture or skin puncture pursuant to this subdivision.

(2) As used in this subdivision, general supervision requires the supervisor of the technician to determine that the technician is competent to perform venipuncture or skin puncture prior to the technician's first blood withdrawal, and on an annual basis thereafter. The supervisor is also required to determine, on a monthly basis, that the technician complies with appropriate venipuncture or skin puncture policies and procedures approved by the medical director and required by state regulations. The supervisor, or another designated licensed physician and surgeon, registered nurse, or person licensed under this chapter, shall be available for consultation with the technician, either in person or through telephonic or electronic means, at the time of blood withdrawal.

(d) The department may adopt regulations providing for the issuance of a certificate to an unlicensed person employed by a clinical laboratory authorizing only the performance of skin punctures for test purposes.

SEC. 1.5. Section 1246 of the Business and Professions Code is amended to read:

1246. (a) Except as provided in subdivisions (b) and (c), and in Section 23158 of the Vehicle Code, an unlicensed person employed by a licensed clinical laboratory may perform venipuncture or skin puncture for the purpose of withdrawing blood or for clinical laboratory test purposes upon specific authorization from a licensed physician and surgeon provided that he or she meets both of the following requirements:

(1) He or she works under the supervision of a person licensed under this chapter or of a licensed physician and surgeon or of a licensed registered nurse. A person licensed under this chapter, a licensed physician or surgeon, or a registered nurse shall be physically available to be summoned to the scene of the venipuncture within five minutes during the performance of those procedures.

(2) He or she has been trained by a licensed physician and surgeon or by a clinical laboratory bioanalyst in the proper procedure to be employed when withdrawing blood in accordance with training requirements established by the State Department of Health Services and has a statement signed by the instructing physician and surgeon or by the instructing clinical laboratory bioanalyst that such training has been successfully completed.

(b) (1) On and after the effective date of the regulations specified in paragraph (2), any unlicensed person employed by a clinical laboratory performing the duties described in this section shall possess a valid and current certification as a ''certified phlebotomy technician'' issued by the department. However, an unlicensed person employed by a clinical laboratory to perform these duties pursuant to subdivision (a) on that date shall comply with this requirement by April 2006, which is three years from the effective date of those regulations.

(2) The department shall adopt regulations for certification by January 1, 2001, as a ''certified phlebotomy technician'' that shall include all of the following:

(A) The applicant shall hold a valid, current certification as a phlebotomist issued by a national accreditation agency approved by the department, and shall submit proof of that certification when applying for certification pursuant to this section.

(B) The applicant shall complete education, training, and experience requirements as specified by regulations that shall include, but not be limited to, the following:

(i) At least 40 hours of didactic instruction.

(ii) At least 40 hours of practical instruction.

(iii) At least 50 successful venipunctures.

However, an applicant who has been performing these duties pursuant to subdivision (a) may be exempted from the requirements specified in clauses (ii) and (iii), and from 20 hours of the 40 hours of didactic

instruction as specified in clause (i), if he or she has at least 1,040 hours of work experience, as specified in regulations adopted by the department.

It is the intent of the Legislature to permit persons performing these duties pursuant to subdivision (a) to use educational leave provided by their employers for purposes of meeting the requirements of this section.

(3) Each ''certified phlebotomy technician'' shall complete at least three hours per year or six hours every two years of continuing education or training. The department shall consider a variety of programs in determining the programs that meet the continuing education or training requirement.

(4) He or she has been found to be competent in phlebotomy by a licensed physician and surgeon or person licensed pursuant to this chapter.

(5) He or she works under the supervision of a licensed physician and surgeon, licensed registered nurse, or person licensed under this chapter, or the designee of a licensed physician and surgeon or the designee of a person licensed under this chapter.

(6) The department shall adopt regulations establishing standards for approving training programs designed to prepare applicants for certification pursuant to this section. The standards shall ensure that these programs meet the state's minimum education and training requirements for comparable programs.

(7) The department shall adopt regulations establishing standards for approving national accreditation agencies to administer certification examinations and tests pursuant to this section.

(8) The department shall charge fees for application for and renewal of the certificate authorized by this section of no more than twenty-five dollars ($25).

(c) (1) (A) A ''certified phlebotomy technician'' may perform venipuncture or skin puncture to obtain a specimen for nondiagnostic tests assessing the health of an individual, for insurance purposes, provided that the technician works under the general supervision of a physician and surgeon licensed under Chapter 5 (commencing with Section 2000). The physician and surgeon may delegate the general supervision duties to a registered nurse or a person licensed under this chapter, but shall remain responsible for ensuring that all those duties and responsibilities are properly performed. The physician and surgeon shall make available to the department, upon request, records maintained documenting when a certified phlebotomy technician has performed venipuncture or skin puncture pursuant to this paragraph.

(B) As used in this paragraph, general supervision requires the supervisor of the technician to determine that the technician is competent to perform venipuncture or skin puncture prior to the technician's first

blood withdrawal, and on an annual basis thereafter. The supervisor is also required to determine, on a monthly basis, that the technician complies with appropriate venipuncture or skin puncture policies and procedures approved by the medical director and required by state regulations. The supervisor, or another designated licensed physician and surgeon, registered nurse, or person licensed under this chapter, shall be available for consultation with the technician, either in person or through telephonic or electronic means, at the time of blood withdrawal.

(2) (A) Notwithstanding any other provision of law, a person who has been issued a ''certified phlebotomy technician'' certificate pursuant to this section may draw blood following policies and procedures approved by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000), appropriate to the location where the blood is being drawn and in accordance with state regulations. The blood collection shall be done at the request and in the presence of a peace officer for forensic purposes in a jail, law enforcement facility, or medical facility, with general supervision.

(B) As used in this paragraph, ''general supervision'' means that the supervisor of the technician is licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, and reviews the competency of the technician before the technician may perform blood withdrawals without direct supervision, and on an annual basis thereafter. The supervisor is also required to review the work of the technician at least once a month to ensure compliance with venipuncture policies, procedures, and regulations. The supervisor, or another person licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, shall be accessible to the location where the technician is working to provide onsite, telephone, or electronic consultation, within 30 minutes when needed.

(d) The department may adopt regulations providing for the issuance of a certificate to an unlicensed person employed by a clinical laboratory authorizing only the performance of skin punctures for test purposes.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 1246 of the Business and Professions Code proposed by both this bill and AB 371. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, and this bill is enacted last.

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 promote public safety as soon as possible by revising the provisions on unlicensed persons performing venipuncture, it is necessary that this act take effect immediately.

CHAPTER 19

An act to add and repeal Section 3041.5 of the Family Code, relating to family law, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 20, 2004. Filed with Secretary of State February 23, 2004.]

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

SECTION 1. Section 3041.5 is added to the Family Code, to read:

3041.5. (a) In any custody or visitation proceeding brought under this part, as described in Section 3021, the court may order any parent who is seeking custody of, or visitation with, a child who is the subject of the proceeding to undergo testing for the illegal use of controlled substances and the use of alcohol if there is a judicial determination based upon a preponderance of evidence that there is the habitual, frequent, or continual illegal use of controlled substances or the habitual or continual abuse of alcohol by the parent or legal custodian. This evidence may include, but may not be limited to, a conviction within the last five years for the illegal use or possession of a controlled substance. The court shall order the least intrusive method of testing for the illegal use of controlled substances or the habitual or continual abuse of alcohol by either or both parents or the legal custodian. If substance abuse testing is ordered by the court, the testing shall be performed in conformance with procedures and standards established by the United States Department of Health and Human Services for drug testing of federal employees. The parent or legal custodian who has undergone drug testing shall have the right to a hearing, if requested, to challenge a positive test result. A positive test result, even if challenged and upheld, shall not, by itself, constitute grounds for an adverse custody decision. Determining the best interests of the child requires weighing all relevant factors. The results of this testing shall be confidential, shall be maintained as a sealed record in the court file, and may not be released to any person except the court, the parties, their attorneys, the Judicial Council (until completion of its authorized study of the testing process) and any person to whom the court expressly grants access by written order made with prior notice to all parties. Any person who has access

to the test results may not disseminate copies or disclose information about the test results to any person other than a person who is authorized to receive the test results pursuant to this section. Any breach of the confidentiality of the test results shall be punishable by civil sanctions not to exceed two thousand five hundred dollars ($2,500). The results of the testing may not be used for any purpose, including any criminal, civil, or administrative proceeding, except to assist the court in determining, for purposes of the proceeding, the best interest of the child pursuant to Section 3011, and the content of the order or judgment determining custody or visitation. The court may order either party, or both parties, to pay the costs of the drug or alcohol testing ordered pursuant to this section. As used in this section, ''controlled substances'' has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

(b) 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. 2. (a) The Judicial Council shall study the implementation of this act and shall report to the Legislature regarding that implementation. The study shall evaluate all of the following:

(1) The number and percentage of custody cases in which drug or alcohol testing is ordered.

(2) The rate of compliance with those orders and the procedures that are followed if a parent fails to comply with the order.

(3) The percentage of cases in which testing is ordered and the parent tests positive for the illegal use of drugs or the use of alcohol.

(4) The impacts of those positive test results on the court's decision to grant or deny custody or visitation.

(b) The Judicial Council shall submit an interim report to the Legislature no later than July 1, 2005, and shall submit a final report to the Legislature no later than July 1, 2007.

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

In order to ensure the safety of children who are the subject of custody and visitation proceedings as soon as possible, it is necessary that this act take effect immediately.

———

CHAPTER 20

An act to amend Section 2625 of the Penal Code, and Section 294 of the Welfare and Institutions Code, relating to dependent children, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 4, 2004. Filed with Secretary of State March 5, 2004.]

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

SECTION 1. Section 2625 of the Penal Code is amended to read:

2625. (a) For the purposes of this section only, the term ''prisoner'' includes any individual in custody in a state prison, the California Rehabilitation Center, or a county jail, or who is a ward of the Department of the Youth Authority or who, upon a verdict or finding that the individual was insane at the time of committing an offense, or mentally incompetent to be tried or adjudged to punishment, is confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private treatment facility.

(b) In any proceeding brought under Part 4 (commencing with Section 7800) of Division 12 of the Family Code, and Section 366.26 of the Welfare and Institutions Code, where the proceeding seeks to terminate the parental rights of any prisoner, or any proceeding brought under Section 300 of the Welfare and Institutions Code, where the proceeding seeks to adjudicate the child of a prisoner a dependent child of the court, the superior court of the county in which the proceeding is pending, or a judge thereof, shall order notice of any court proceeding regarding the proceeding transmitted to the prisoner.

(c) Service of notice shall be made pursuant to Section 7881 or 7882 of the Family Code or Section 290.2, 291, or 294 of the Welfare and Institutions Code, as appropriate.

(d) Upon receipt by the court of a statement from the prisoner or his or her attorney indicating the prisoner's desire to be present during the court's proceedings, the court shall issue an order for the temporary removal of the prisoner from the institution, and for the prisoner's production before the court. No proceeding may be held under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 366.26 of the Welfare and Institutions Code and no petition to adjudge the child of a prisoner a dependent child of the court pursuant to subdivision (a), (b), (c), (d), (e), (f), (i), or (j) of Section 300 of the Welfare and Institutions Code may be adjudicated without the physical presence of the prisoner or the prisoner's attorney, unless the court has before it a knowing waiver of the right of physical presence signed by the prisoner or an affidavit signed by the warden, superintendent, or

other person in charge of the institution, or his or her designated representative stating that the prisoner has, by express statement or action, indicated an intent not to appear at the proceeding.

(e) In any other action or proceeding in which a prisoner's parental or marital rights are subject to adjudication, an order for the prisoner's temporary removal from the institution and for the prisoner's production before the court may be made by the superior court of the county in which the action or proceeding is pending, or by a judge thereof. A copy of the order shall be transmitted to the warden, superintendent, or other person in charge of the institution not less than 15 days before the order is to be executed. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, to keep the prisoner safely, and when the prisoner's presence is no longer required, to return the prisoner to the institution from which he or she was taken. The expense of executing the order shall be a proper charge against, and shall be paid by, the county in which the order shall be made.

The order shall be to the following effect:

County of ____ (as the case may be).

The people of the State of California to the warden of ____:

An order having been made this day by me, that (name of prisoner) be produced in this court as a party in the case of ____, you are commanded to deliver (name of prisoner) into the custody of ____ for the purpose of (recite purposes).

Dated this ____ day of ____, 20__.

(f) When a prisoner is removed from the institution pursuant to this section, the prisoner shall remain in the constructive custody of the warden, superintendent, or other person in charge of the institution.

(g) Notwithstanding any other law, a court may not order the removal and production of a prisoner sentenced to death, whether or not that sentence is being appealed, in any action or proceeding in which the prisoner's parental rights are subject to adjudication.

SEC. 2. Section 294 of the Welfare and Institutions Code is amended to read:

294. The social worker or probation officer shall give notice of a selection and implementation hearing held pursuant to Section 366.26 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The fathers, presumed and alleged.

(3) The child, if the child is 10 years of age or older.

(4) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(5) The grandparents of the child, if their address is known and if the parent's whereabouts are unknown.

(6) All counsel of record.

(7) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) The following persons shall not be notified of the hearing:

(1) A parent who has relinquished the child to the State Department of Social Services or to a licensed adoption agency for adoption, and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code.

(2) An alleged father who has denied paternity and has executed a waiver of the right to notice of further proceedings.

(3) A parent whose parental rights have been terminated.

(c) (1) Service of the notice shall be completed at least 45 days before the hearing date. Service is deemed complete at the time the notice is personally delivered to the person named in the notice or 10 days after the notice has been placed in the mail, or at the expiration of the time prescribed by the order for publication.

(2) In the case of an Indian child, notice to the Indian custodian and the tribe shall be completed at least 10 days before the hearing.

(3) In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(4) Service of notice in cases where publication is ordered shall be completed at least 30 days before the date of the hearing.

(d) Regardless of the type of notice required, or the manner in which it is served, once the court has made the initial finding that notice has properly been given to the parent, or to any person entitled to receive notice pursuant to this section, subsequent notice for any continuation of a Section 366.26 hearing may be by first-class mail to any last known address, by an order made pursuant to Section 296, or by any other means that the court determines is reasonably calculated, under any circumstance, to provide notice of the continued hearing. However, if the recommendation changes from the recommendation contained in the

notice previously found to be proper, notice shall be provided to the parent, and to any person entitled to receive notice pursuant to this section, regarding that subsequent hearing.

(e) The notice shall contain the following information:

(1) The date, time, and place of the hearing.

(2) The right to appear.

(3) The parents' right to counsel.

(4) The nature of the proceedings.

(5) The recommendation of the supervising agency.

(6) A statement that, at the time of hearing, the court is required to select a permanent plan of adoption, legal guardianship, or long-term foster care for the child.

(7) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(f) Notice to the parents may be given in any one of the following manners:

(1) If the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26, the court shall advise the parent of the date, time, and place of the proceedings, their right to counsel, the nature of the proceedings, and the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the child. The court shall direct the parent to appear for the proceedings and then direct that the parent be notified thereafter by first-class mail to the parent's usual place of residence or business only.

(2) Certified mail, return receipt requested, to the parent's last known mailing address. This notice shall be sufficient if the child welfare agency receives a return receipt signed by the parent.

(3) Personal service to the parent named in the notice.

(4) Delivery to a competent person who is at least 18 years of age at the parent's usual place of residence or business, and thereafter mailed to the parent named in the notice by first-class mail at the place where the notice was delivered.

(5) If the residence of the parent is outside the state, service may be made as described in paragraph (1), (3), or (4) or by certified mail, return receipt requested.

(6) If the recommendation of the probation officer or social worker is legal guardianship or long-term foster care, service may be made by first-class mail to the parent's usual place of residence or business.

(7) If the parent's whereabouts are unknown and the parent cannot, with reasonable diligence, be served in any manner specified in

paragraphs (1) to (6), inclusive, the petitioner shall file an affidavit with the court at least 75 days before the hearing date, stating the name of the parent and describing the efforts made to locate and serve the parent.

(A) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends adoption, service shall be to that parent's attorney of record, if any, by certified mail, return receipt requested. If the parent does not have an attorney of record, the court shall order that service be made by publication of citation requiring the parent to appear at the date, time, and place stated in the citation, and that the citation be published in a newspaper designated as most likely to give notice to the parent. Publication shall be made once a week for four consecutive weeks. Whether notice is to the attorney of record or by publication, the court shall also order that notice be given to the grandparents of the child by first-class mail.

(B) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends legal guardianship or long-term foster care, no further notice is required to the parent, but the court shall order that notice be given to the grandparents of the child by first-class mail.

(C) In any case where the residence of the parent becomes known, notice shall immediately be served upon the parent as provided for in either paragraph (2), (3), (4), (5), or (6).

(8) If the identity of one or both of the parents, or alleged parents, of the child is unknown, or if the name of one or both parents is uncertain, then that fact shall be set forth in the affidavit and the court, if ordering publication, shall order the published citation to be directed to either the father or mother, or both, of the child, and to all persons claiming to be the father or mother of the child, naming and otherwise describing the child.

(g) Notice to the child and all counsel of record shall be by first-class mail.

(h) In the case of an Indian child, notice to the tribe shall be by registered mail, return receipt requested.

(i) Notwithstanding subdivision (a), if the attorney of record is present at the time the court schedules a hearing pursuant to Section 366.26, no further notice is required, except as required by subparagraph (A) of paragraph (7) of subdivision (f).

(j) This section shall also apply to children adjudged wards pursuant to Section 727.31.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing

with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Chapters 416 and 918 of the Statutes of 2002 amended the law governing notice in dependency proceedings. Those chapters failed to make conforming code reference changes. Without conforming legislation, the Welfare and Institutions Code contains conflicting notice provisions. This conflict will result in confusion among courts, attorneys, case workers, and those affected by dependency proceedings. That confusion could affect the rights of both children and their parents or guardians. Immediate action is necessary to eliminate this conflict.

CHAPTER 21

An act to amend Section 56836.155 of, and to add and repeal Article 7 (commencing with Section 48300) of Chapter 2 of Part 27 of, the Education Code, relating to public schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 4, 2004. Filed with Secretary of State March 5, 2004.]

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

SECTION 1. Article 7 (commencing with Section 48300) is added to Chapter 2 of Part 27 of the Education Code, to read:

Article 7. Pupil Attendance Alternatives

48300. For purposes of this article, the following definitions apply:

(a) ''School district of choice'' means a school district for which a resolution is in effect as described in subdivision (a) of Section 48301.

(b) ''School district of residence'' means the school district that a pupil would be directed by this chapter to attend, except as otherwise provided by this article.

48301. (a) The governing board of any school district may accept interdistrict transfers. A school district that receives an application for attendance under this article is not required to admit pupils to its schools.

If, however, the governing board elects to accept transfers as authorized under this article, it may, by resolution, elect to accept transfer pupils, determine and adopt the number of transfers it is willing to accept under this article, and ensure that pupils admitted under the policy are selected through a random, unbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based upon his or her academic or athletic performance. Any pupil accepted for transfer shall be deemed to have fulfilled the requirements of Section 48204.

(b) Either the pupil's school district of residence, upon notification of the pupil's acceptance to the school district of choice pursuant to subdivision (c) of Section 48308, or the school district of choice may prohibit the transfer of a pupil under this article or limit the number of pupils so transferred if the governing board of the district determines that the transfer would negatively impact any of the following:

(1) The court-ordered desegregation plan of the district.

(2) The voluntary desegregation plan of the district.

(3) The racial and ethnic balance of the district.

(c) The school district of residence may not adopt policies that in any way block or discourage pupils from applying for transfer to another district.

48302. School districts are encouraged to hold informational hearings on the current educational program the district is offering so that parents may provide input to the district on methods to improve the current program and so that parents may make informed decisions regarding their children's education.

48303. (a) The school district of choice may not prohibit a transfer of a pupil under this article based upon a determination by the governing board of that school district that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer. However, a school district may reject the transfer of a pupil if the transfer of that pupil would require the district to create a new program to serve that pupil.

(b) This section is intended to ensure that special education, bilingual, or other special needs pupils are not discriminated against by the school district of choice because of the costs associated with educating those pupils. Pupils with special needs may take full advantage of the choice options available under this section.

48304. An application of any pupil for transfer may not be approved under this article if the transfer would require the displacement, from a school or program conducted within any attendance area of the school district of choice, of any other pupil who resides within that attendance area or is currently enrolled in that school.

48305. School districts of choice may employ existing entrance criteria for specialized schools or programs if the criteria are uniformly applied to all applicants.

48306. Each school district of choice shall give priority for attendance to siblings of children already in attendance in that district.

48307. (a) A school district of residence with an average daily attendance greater than 50,000 may limit the number of pupils transferring out each year to 1 percent of its current year estimated average daily attendance.

(b) A school district of residence with an average daily attendance of less than 50,000 may limit the number of pupils transferring out to 3 percent of its current year estimated average daily attendance and may limit the maximum number of pupils transferring out for the duration of the program authorized by this article to 10 percent of the average daily attendance for that period.

48308. (a) Any application for transfer under this article shall be submitted by the pupil's parent or guardian to the school district of choice that has elected to accept transfer pupils pursuant to Section 48301 prior to January 1 of the school year preceding the school year for which the pupil is to be transferred. This application deadline may be waived upon agreement of the pupil's school district of residence and the school district of choice.

(b) The application may be submitted on a form provided for this purpose by the department and may request enrollment of the pupil in a specific school or program of the district.

(c) Not later than 90 days after the receipt by a school district of an application for transfer, the governing board of the district may notify the parent or guardian in writing whether the application has been provisionally accepted or rejected or of the pupil's position on any waiting list. Final acceptance or rejection shall be made by May 15 preceding the school year for which the pupil is to be transferred. In the event of an acceptance, that notice may be provided also to the school district of residence. If the application is rejected, the district governing board may set forth in the written notification to the parent or guardian the specific reason or reasons for that determination, and may ensure that the determination, and the specific reason or reasons therefor, are accurately recorded in the minutes of a regularly scheduled board meeting in which the determination was made.

(d) Final acceptance of the transfer is applicable for one school year and will be renewed automatically each year unless the school district of choice through the adoption of a resolution withdraws from participation in the program and no longer will accept any transfer pupils from other districts. However, if a school district of choice withdraws

from participation in the program, high school pupils admitted under this article may continue until they graduate from high school.

48309. (a) Any school district of choice that admits any pupil under this section may accept any completed coursework, attendance, and other academic progress credited to that pupil by the school district or districts previously attended by that pupil, and may grant academic standing to that pupil based upon the district's evaluation of the academic progress credited to that pupil.

(b) Any school district of choice that admits a pupil under this section may revoke the pupil's transfer if the pupil is recommended for expulsion pursuant to Section 48918.

48310. (a) The average daily attendance for pupils admitted by a school district of choice pursuant to this article shall be credited to that district pursuant to Section 46607. The attendance report for the school district of choice may include an identification of the school district of residence.

(b) Notwithstanding other provisions of law, state aid for categorical education programs for pupils admitted under this article shall be apportioned to the school district of choice.

(c) For any school district of choice that is a basic aid district, the Superintendent of Public Instruction shall calculate for that basic aid district an apportionment of state funds that provides 70 percent of the district revenue limit calculated pursuant to Section 42238 that would have been apportioned to the school district of residence for any average daily attendance credited pursuant to this section. For purposes of this subdivision, the term ''basic aid district'' means a school district that does not receive from the state, for any fiscal year in which the subdivision is applied, an apportionment of state funds pursuant to subdivision (h) of Section 42238.

(d) The State Allocation Board shall develop procedures to ensure that the average daily attendance of pupils admitted by a school district of choice pursuant to this article shall be credited to that school district for the purposes of any determination under Article 2 (commencing with Section 17010) of Chapter 12 of Part 10 that utilizes an average daily attendance calculation.

48311. Upon request of the pupil's parent or guardian, each school district of choice that admits a pupil under this section to any school or program of the district may provide to the pupil transportation assistance within the boundaries of the district to that school or program, to the extent that the district otherwise provides transportation assistance to pupils.

48312. Each school district may make information regarding its schools, programs, policies, and procedures available to any interested person upon request.

48313. (a) Pursuant to this article, each school district electing to accept transfer pupils may keep an accounting of all requests made for alternative attendance and records of all disposition of those requests that may include, but are not to be limited to, all of the following:

(1) The number of requests granted, denied, or withdrawn. In the case of denied requests, the records may indicate the reasons for the denials.

(2) The number of pupils transferred out of the district.

(3) The number of pupils transferred into the district.

(b) The information maintained pursuant to subdivision (a) may be reported to the governing board of the school district at a regularly scheduled meeting of the governing board. If the information is reported to the governing board of the school district, the information shall be reported to the Superintendent of Public Instruction annually, and the superintendent shall make the information available to the Governor, the Legislature, and the public.

48314. It is the intent of the Legislature that every parent in this state be informed of their opportunity for currently existing choice options under this article regardless of ethnicity, primary language, or literacy.

48315. This article shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 56836.155 of the Education Code is amended to read:

56836.155. (a) On or before November 2, 1998, the department, in conjunction with the Office of the Legislative Analyst, shall do the following:

(1) Calculate an ''incidence multiplier'' for each special education local plan area using the definition, methodology, and data provided in the final report submitted by the American Institutes for Research pursuant to Section 67 of Chapter 854 of the Statutes of 1997.

(2) Submit the incidence multiplier for each special education local plan area and supporting data to the Department of Finance.

(b) The Department of Finance shall review the incidence multiplier for each special education local plan area and the supporting data, and report any errors to the department and the Office of the Legislative Analyst for correction.

(c) The Department of Finance shall approve the final incidence multiplier for each special education local plan area by November 23, 1998.

(d) For the 1998–99 fiscal year and each fiscal year thereafter to and including the 2003–04 fiscal year, the superintendent shall perform the following calculation to determine each special education local plan area's adjusted entitlement for the incidence of disabilities:

(1) The incidence multiplier for the special education local plan area shall be multiplied by the statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11 for the fiscal year in which the computation is made.

(2) The amount determined pursuant to paragraph (1) shall be added to the statewide target amount per unit of average daily attendance for special education local plan area determined pursuant to Section 56836.11 for the fiscal year in which the computation is made.

(3) Subtract the amount of funding for the special education local plan area determined pursuant to paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b) of Section 56836.08, as appropriate for the fiscal year in which the computation is made, or the statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11 for the fiscal year in which the computation is made, whichever is greater, from the amount determined pursuant to paragraph (2). For the purposes of this paragraph for the 2002–03 and 2003–04 fiscal years, the amount, if any, received pursuant to Section 56836.159 shall be excluded from the funding level per unit of average daily attendance for a special education local plan area. If the result is less than zero, the special education local plan area may not receive an adjusted entitlement for the incidence of disabilities.

(4) Multiply the amount determined in paragraph (3) by either the average daily attendance reported for the special education local plan area for the fiscal year in which the computation is made, as adjusted pursuant to subdivision (a) of Section 56836.15, or the average daily attendance reported for the special education local plan area for the prior fiscal year, as adjusted pursuant to subdivision (a) of Section 56826.15, whichever is less.

(5) If there are insufficient funds appropriated in the fiscal year for which the computation is made for the purposes of this section, the amount received by each special education local plan area shall be prorated.

(e) For the 1997–98 fiscal year, the superintendent shall perform the calculation in paragraphs (1) to (3), inclusive, of paragraph (d) only for the purposes of making the computation in paragraph (1) of subdivision (d) of Section 56836.08, but the special education local plan area may not receive an adjusted entitlement for the incidence of disabilities pursuant to this section for the 1997–98 fiscal year.

(f) On or before March 1, 2003, the Office of the Legislative Analyst, in conjunction with the Department of Finance and the department, shall submit to the Legislature a new study of the incidence multiplier, with recommendations as to the necessity of continuing to adjust the funding formula contained in this chapter for the purposes of this section to the

extent that funding is provided for this purpose. The Office of the Legislative Analyst may contract for this study. It is the intent of the Legislature to provide funding for this study in the Budget Act of 2002.

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

In order to ensure that laws regarding pupil attendance, including those laws regarding pupils with special needs, are enacted at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 22

An act to amend Section 538e of, and to add Section 538g to, the Penal Code, relating to crime, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 4, 2004. Filed with Secretary of State March 5, 2004.]

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

SECTION 1. Section 538e of the Penal Code is amended to read:

538e. (a) Any person, other than an officer or member of a fire department, who willfully wears, exhibits, or uses the authorized uniform, insignia, emblem, device, label, certificate, card, or writing of an officer or member of a fire department or a deputy state fire marshal, with the intent of fraudulently personating an officer or member of a fire department or the Office of the State Fire Marshal, or of fraudulently inducing the belief that he or she is an officer or member of a fire department or the Office of the State Fire Marshal, is guilty of a misdemeanor.

(b) (1) Any person, other than the one who by law is given the authority of an officer or member of a fire department, or a deputy state fire marshal, who willfully wears, exhibits, or uses the badge of a fire department or the Office of the State Fire Marshal with the intent of fraudulently impersonating an officer, or member of a fire department, or a deputy state fire marshal, or of fraudulently inducing the belief that he or she is an officer or member of a fire department, or a deputy state fire marshal, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed two thousand dollars ($2,000), or by both that imprisonment and fine.

(2) Any person who willfully wears or uses any badge that falsely purports to be authorized for the use of one who by law is given the authority of an officer or member of a fire department, or a deputy state fire marshal, or which so resembles the authorized badge of an officer or member of a fire department, or a deputy state fire marshal as would deceive any ordinary reasonable person into believing that it is authorized for the use of one who by law is given the authority of an officer or member of a fire department or a deputy state fire marshal, for the purpose of fraudulently impersonating an officer or member of a fire department, or a deputy state fire marshal, or of fraudulently inducing the belief that he or she is an officer or member of a fire department, or a deputy state fire marshal, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed two thousand dollars ($2,000), or by both that imprisonment and fine.

(c) Any person who willfully wears, exhibits, or uses, or who willfully makes, sells, loans, gives, or transfers to another, any badge, insignia, emblem, device, or any label, certificate, card, or writing, which falsely purports to be authorized for the use of one who by law is given the authority of an officer, or member of a fire department or a deputy state fire marshal, or which so resembles the authorized badge, insignia, emblem, device, label, certificate, card, or writing of an officer or member of a fire department or a deputy state fire marshal as would deceive an ordinary reasonable person into believing that it is authorized for use by an officer or member of a fire department or a deputy state fire marshal, is guilty of a misdemeanor, except that any person who makes or sells any badge under the circumstances described in this subdivision is guilty of a misdemeanor punishable by a fine not to exceed fifteen thousand dollars ($15,000).

(d) Any person who, for the purpose of selling, leasing or otherwise disposing of merchandise, supplies or equipment used in fire prevention or suppression, falsely represents, in any manner whatsoever, to any other person that he or she is a fire marshal, fire inspector or member of a fire department, or that he or she has the approval, endorsement or authorization of any fire marshal, fire inspector or fire department, or member thereof, is guilty of a misdemeanor.

(e) This section shall not apply to either of the following:

(1) Use of a badge solely as a prop for a motion picture, television, or video production, or an entertainment or theatrical event.

(2) A badge supplied by a recognized employee organization as defined in Section 3501 of the Government Code representing firefighters or a state or international organization to which it is affiliated.

SEC. 2. Section 538g is added to the Penal Code, to read:

538g. (a) Any person, other than a state, county, city, special district, or city and county officer or employee, who willfully wears, exhibits, or uses the authorized badge, photographic identification card, or insignia of a state, county, city, special district, or city and county officer or employee, with the intent of fraudulently personating a state, county, city, special district, or city and county officer or employee, or of fraudulently inducing the belief that he or she is a state, county, city, special district, or city and county officer or employee, is guilty of a misdemeanor.

(b) Any person who willfully wears, exhibits, or uses, or willfully makes, sells, loans, gives, or transfers to another, any badge, photographic identification card, or insignia, which falsely purports to be for the use of a state, county, city, special district, or city and county officer or employee, or which so resembles the authorized badge, photographic identification card, or insignia of a state, county, city, special district, or city and county officer or employee as would deceive an ordinary reasonable person into believing that it is authorized for use by a state, county, city, special district, or city and county officer or employee, is guilty of a misdemeanor, except that any person who makes or sells any badge under the circumstances described in this subdivision is subject to a fine not to exceed fifteen thousand dollars ($15,000).

(c) This section shall not apply to either of the following:

(1) Use of a badge solely as a prop for a motion picture, television, or video production, or an entertainment or theatrical event.

(2) A badge supplied by a recognized employee organization as defined in Section 3501 of the Government Code or a state or international organization to which it is affiliated.

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.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enhance security and increase public safety, the unauthorized use of badges and photographic identification cards, and the illegal manufacture of badges and photographic identification cards that falsely purport to be, or that resemble, the authorized badge or photographic identification cards, of fire department officers or

members, and of all state, county, city, special district, or city and county officers and employees must be curtailed, thus, it is necessary that this act take effect immediately.

CHAPTER 23

An act to amend Items 2180-011-0067, 2740-001-0001, and 2740-001-0044 of Section 2.00 of, and to add Items 2150-011-0299, 2240-116-0813, 2240-402, 2310-011-0400, 3860-497, 4120-495, 4200-496, 4260-496, 4280-495, 4300-495, 4440-496, 4700-495, 5160-496, and 5175-496 to Section 2.00 of, the Budget Act of 2003 (Chapter 157 of the Statutes of 2003), relating to the support of state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 4, 2004. Filed with Secretary of State March 5, 2004.]

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

SECTION 1. The reversions and transfers added by this act are in addition to the appropriations made in Section 2.00 of the Budget Act of 2003 (Chapter 157 of the Statutes of 2003) and are subject to the provisions of that act, as appropriate, including, as applicable, the provisions of that act that apply to the items of appropriation that are amended by this act. Unless otherwise specified, the references in this act to item numbers refer to items of appropriation in Section 2.00 of the Budget Act of 2003 (Chapter 157 of the Statutes of 2003).

SEC. 2. Item 2150-011-0299 is added to Section 2.00 of the Budget Act of 2003, to read:

2150-011-0299—For transfer by the Controller, upon order of the Director of Finance, from the Credit Union Fund to the General Fund . . . . . (1,800,000)

Provisions:

1. The transfer made by this item is a loan to the General Fund. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer. It is the intent of the Legislature that repayment be made so as to ensure that the programs supported by this fund are not adversely affected by the loan.

SEC. 3. Item 2180-011-0067 of Section 2.00 of the Budget Act of 2003 is amended to read:

2180-011-0067—For transfer by the Controller from the State Corporations Fund to the General Fund . . . . . (44,907,000)
Provisions:
1. Notwithstanding any other provision of law, the amount of this item shall be transferred from the State Corporations Fund to the General Fund.

SEC. 4. Item 2240-116-0813 is added to Section 2.00 of the Budget Act of 2003, to read:

2240-116-0813—For transfer, upon order of the Director of Finance, from the Self–Help Housing Fund to the General Fund, from the amount transferred pursuant to Provision 4 of Item 2240–103–0001, Budget Act of 2000 (Ch. 52, Stats. 2000) . . . . . (3,900,000)

SEC. 5. Item 2240-402 is added to Section 2.00 of the Budget Act of 2003, to read:

2240-402—The Department of Housing and Community Development shall review approved allocations of project funds provided from previous General Fund transfers. The department, no later than June 30, 2004, shall submit a report to the chairperson of the committee in each house that considers appropriations, and to the Chairperson of the Joint Legislative Budget Committee, that identifies the amounts available for transfer to the General Fund from each fund source. It is anticipated that the amounts to be transferred to the General Fund will be $5,000,000.

The Department of Finance is hereby authorized to transfer any amounts not to exceed $5,000,000 of the amounts identified in this report to the General Fund for the 2003–04 fiscal year.

SEC. 6. Item 2310-011-0400 is added to Section 2.00 of the Budget Act of 2003, to read:

2310-011-0400—For transfer, upon order of the Director of Finance, from the Real Estate Appraisers Regulation Fund to the General Fund . . . . . (2,000,000)
Provisions:

1. The transfer made by this item is a loan to the General Fund. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer. It is the intent of the Legislature that repayment be made so as to ensure that the programs supported by this fund are not adversely affected by the loan.

SEC. 7. Item 2740-001-0001 of Section 2.00 of the Budget Act of 2003 is amended to read:

2740-001-0001—For support of Department of Motor Vehicles, for payment to Item 2740-001-0044 544,000

SEC. 8. Item 2740-001-0044 of Section 2.00 of the Budget Act of 2003 is amended to read:

2740–001–0044—For support of Department of Motor Vehicles, payable from the Motor Vehicle Account, State Transportation Fund 361,135,000

Schedule:

(1) 11–Vehicle/Vessel Identification and Compliance	384,229,000
(2) 22–Driver Licensing and Personal Identification	172,468,000
(3) 25–Driver Safety	87,336,000
(4) 32–Occupational Licensing and Investigative Services	36,876,000
(5) 35–New Motor Vehicle Board . .	1,708,000
(6) 41.01–Administration	81,685,000
(7) 41.02–Distributed Administration	–81,685,000
(8) Reimbursements	–12,524,000
(9) Amount payable from the General Fund (Item 2740–001–0001) . . .	–544,000
(10) Amount payable from the State Highway Account, State Transportation Fund (Item 2740–001–0042)	–38,608,000
(11) Amount payable from the New Motor Vehicle Board Account (Item 2740–001–0054)	–1,708,000

(12) Amount payable from the Motor Vehicle License Fee Account, Transportation Tax Fund (Item 2740–001–0064) . . . . . –263,595,000

(13) Amount payable from the Harbors and Watercraft Revolving Fund (Item 2740–001–0516) . . . –4,503,000

SEC. 9. Item 3860-497 is added to Section 2.00 of the Budget Act of 2003, to read:

3860-497—Reversion, Department of Water Resources. The sum of $105,000,000 from the appropriation in Item 3860-101-0001, Budget Act of 2003 (Ch. 157, Stats. 2003), shall revert to the General Fund. Pursuant to Provision 1 of this item, the original appropriation was considered to be an expenditure for the 2002–03 fiscal year.

SEC. 10. Item 4120-495 is added to Section 2.00 of the Budget Act of 2003, to read:

4120-495—Reversion, Emergency Medical Services Authority. The sum of $129,000 from Schedule (1) 10–Emergency Medical Services Authority appropriated in Item 4120–001–0001, Budget Act of 2002 (Ch. 379, Stats. 2002) shall revert to the General Fund.

SEC. 11. Item 4200-496 is added to Section 2.00 of the Budget Act of 2003, to read:

4200-496—Reversion, Department of Alcohol and Drug Programs. The sum of $163,000 from the appropriations provided in the following citations shall revert to the General Fund:

0001—General Fund

(1) $163,000 from Schedule (1) 15–Alcohol and Other Drug Services Program appropriated in Item 4200-017-0001, Budget Act of 2002 (Ch. 379, Stats. 2002).

SEC. 12. Item 4260-496 is added to Section 2.00 of the Budget Act of 2003, to read:

4260–496—Reversion, Department of Health Services. A total of $9,355,000 from the appropriations provided in the following citations shall revert to the General Fund:

0001—General Fund

(1) $440,000 from Schedule (1) 10–Public and Environmental Health in Item 4260-017-0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

(2) $5,090,000 from Schedule (2) 20–Health Care Services in Item 4260-017-0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

(3) $1,171,000 from Schedule (2) 20–Health Care Services in Item 4260-017-0001, Budget Act of 2003 (Ch. 157, Stats. 2003)

(4) $2,654,000 from Schedule (2) 20.10.020–Fiscal Intermediary Management in Item 4260-117-0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

SEC. 13. Item 4280-495 is added to Section 2.00 of the Budget Act of 2003, to read:

4280-495—Reversion, Managed Risk Medical Insurance Board. A total of $2,290,000 from the appropriations provided in the following citations shall revert to the General Fund:

0001—General Fund

(1) $100,000 from Schedule (1) 20–Access for Infants and Mothers Program in Item 4280–101–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

(2) $2,190,000 from Schedule (2) 40–Healthy Families Program in Item 4280–101–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

SEC. 14. Item 4300-495 is added to Section 2.00 of the Budget Act of 2003, to read:

4300-495—Reversion, Department of Developmental Services. A total of $2,709,000 from the appropriations provided in the following citations shall revert to the General Fund:

0001—General Fund

(1) $542,000 from Schedule (1) 20–Developmental Centers Program in Item 4300–017–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

(2) $167,000 from Schedule (1) 10.10.10–Regional Centers: Operations in Item 4300–117–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

(3) $2,000,000 from Schedule (1) 20–Developmental Centers Program in Item 4300–003–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

SEC. 15. Item 4440-496 is added to Section 2.00 of the Budget Act of 2003, to read:

4440-496—Reversion, Department of Mental Health. The sum of $1,408,000 from the appropriations provided in the following citations shall revert to the General Fund:

0001—General Fund

(1) $1,000,000 from Schedule (2) 20.20–Long–Term Care Services–Penal Code and Judicially Committed in Item 4440–011–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

(2) $408,000 from Schedule (1) 10–Community Services in Item 4440–017–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

SEC. 16. Item 4700-495 is added to Section 2.00 of the Budget Act of 2003, to read:

4700-495—Reversion, Department of Community Services and Development. Notwithstanding any other provision of law, the sum of $571,000 from the appropriations provided in Section 5 of Chapter 7 of the Statutes of 2001, First Extraordinary Session, as amended by Section 57 of Chapter 111 of the Statutes of 2001, shall revert to the General Fund.

SEC. 17. Item 5160-496 is added to Section 2.00 of the Budget Act of 2003, to read:

5160-496—Reversion, Department of Rehabilitation. A total of $7,536,000 from the appropriations provided in the following citations shall revert to the General Fund:
0001—General Fund
(1) $694,000 from Schedule (1) 10–Vocational Rehabilitation Services in Item 5160–001–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)
(2) $36,000 from Schedule (2) 20–Habilitation Services in Item 5160–001–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)
(3) $6,806,000 from Schedule (2) 20–Habilitation Services in Item 5160–101–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

SEC. 18. Item 5175-496 is added to Section 2.00 of the Budget Act of 2003, to read:

5175-496—Reversion, Department of Child Support Services. A total of $2,624,000 from the appropriations provided in the following citations shall revert to the General Fund:
0001—General Fund
(1) $1,151,000 from Schedule (1) 10–Child Support Services in Item 5175–001–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)
(2) $1,473,000 from Schedule (1) 10–Child Support Services in Item 5175–002–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that necessary reversions, transfers, and adjustments by this act to the appropriations in the Budget Act of 2003 for support of state government for the 2003–04 fiscal year be made as soon as possible, it is necessary that this act take effect immediately.

———

CHAPTER 24

An act to amend Section 10754 of the Revenue and Taxation Code, relating to local government finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 4, 2004. Filed with Secretary of State March 5, 2004.]

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

SECTION 1. Section 10754 of the Revenue and Taxation Code is amended to read:

10754. (a) Notwithstanding any other provision of law, the total amount of the vehicle license fee otherwise required with respect to a vehicle shall be offset in accordance with those provisions set forth below that are operative pursuant to subdivision (b):

(1) (A) For any initial or original registration of any vehicle, never before registered in this state, for which the final due date for the license fee is on or after January 1 of any calendar year for which this paragraph is operative, and for any renewal of registration with an expiration date on or after January 1 of any calendar year for which this paragraph is operative, the department shall offset the total amount of fees otherwise due at the time of registration of that vehicle by an amount equal to 25 percent of the amount computed pursuant to Section 10752 or 10752.1, or Section 18115 of the Health and Safety Code.

(B) Upon proper payment of license fees to the Department of Motor Vehicles, the amount of the offset for each vehicle shall be transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund, and into the Local Revenue Fund, pursuant to Section 11000 or Section 11000.1, as applicable.

(C) During any period in which insufficient moneys are available to be transferred from the General Fund to fully fund the offsets required by subparagraph (A), within 90 days of a reduction of funding, the department shall reduce the amount of each offset computed pursuant to that subparagraph by multiplying that amount by the ratio of the amount of moneys actually available to be transferred from the General Fund to pay for those offsets to the amount of moneys that is necessary to fully fund those offsets.

(2) (A) For any initial or original registration of any vehicle, never before registered in this state, for which the final due date for the license fee is on or after January 1 of any calendar year for which this paragraph is operative, and for any renewal of registration with an expiration date on or after January 1 of any calendar year for which this paragraph is operative, the department shall offset the total amount of fees otherwise

due at the time of registration of that vehicle by an amount equal to 35 percent of the amount computed pursuant to Section 10752 or 10752.1, or Section 18115 of the Health and Safety Code.

(B) Upon proper payment of license fees to the Department of Motor Vehicles, the amount of the offset for each vehicle shall be transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund, and into the Local Revenue Fund, pursuant to Section 11000 or Section 11000.1, as applicable.

(C) During any period in which insufficient moneys are available to be transferred from the General Fund to fully fund the offsets required by subparagraph (A), within 90 days of a reduction of funding, the department shall reduce the amount of each offset computed pursuant to that subparagraph by multiplying that amount by the ratio of the amount of moneys actually available to be transferred from the General Fund to pay for those offsets to the amount of moneys that is necessary to fully fund those offsets.

(3) (A) For any initial or original registration of any vehicle, never before registered in this state, for which the final due date for the license fee is on or after January 1 of any calendar year for which this paragraph is operative, and for any renewal of registration with an expiration date on or after January 1 of any calendar year for which this paragraph is operative, the department shall offset the total amount of fees otherwise due at the time of registration of that vehicle by an amount equal to $67^1/_2$ percent of the amount computed pursuant to Section 10752 or 10752.1, or Section 18115 of the Health and Safety Code.

(B) Upon proper payment of license fees to the Department of Motor Vehicles, the amount of the offset for each vehicle shall be transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund, and into the Local Revenue Fund, pursuant to Section 11000 or Section 11000.1, as applicable.

(C) During any period in which insufficient moneys are available to be transferred from the General Fund to fully fund the offsets required by subparagraph (A), within 90 days of a reduction in funding, the department shall reduce the amount of each offset computed pursuant to that subparagraph by multiplying that amount by the ratio of the amount of moneys actually available to be transferred from the General Fund to pay for those offsets to the amount of moneys that is necessary to fully fund those offsets.

(D) (i) The Controller shall on August 15, 2006, transfer from the General Fund to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund amounts equal to the total amount of offsets that were applied to new vehicle registrations before October 1, 2003, and that were applied to vehicle license fees with a due date before October 1, 2003, that were not transferred into the Motor Vehicle

License Fee Account in the Transportation Tax Fund and into the Local Revenue Fund due to the operation of Item 9100-102-0001 of Section 2.00 of the Budget Act of 2003. The amount of this transfer shall include transfers not made for offsets applied on or after June 20, 2003. The transferred moneys shall be allocated from the Motor Vehicle License Fee Account in the Transportation Tax Fund in the manner as otherwise specified by law for the allocation of moneys from that account. The Controller may make the transfer required by this subparagraph prior to August 15, 2006, if that transfer is authorized by the Legislature.

(ii) The Controller, with the approval of the Department of Finance, may advance from the Motor Vehicle License Fee Account in the Transportation Tax Fund to any county or city that entity's share of the vehicle license fee revenues that are required to be transferred under clause (i), if that entity demonstrates that it will experience a hardship if the advance is not made. For purposes of this clause, those circumstances demonstrating that a county or city will experience a ''hardship,'' include, but are not limited to, the following:

(I) A county or city that has pledged its share of vehicle license fee revenues as security for any indebtedness that, as a result of the delay of the disbursement, will compromise its ability to repay that indebtedness.

(II) A county's or city's share of vehicle license fee revenues, as determined by the Controller, exceeds 37 percent of that entity's general revenue. In the case of a county, the Controller shall make the required calculation of that entity's general revenue based on information derived from the State of California Counties Annual Report for the 2000–01 fiscal year. In the case of a city, the Controller shall make the required calculation based on information derived from the State of California Cities Annual Report for the 2000–01 fiscal year.

(III) A city that is newly incorporated that is entitled to the allocations of vehicle license fee revenues authorized by Section 11005.3.

(iii) The sum of twenty million three hundred sixty-five thousand dollars ($20,365,000) is hereby appropriated from the General Fund to the Motor Vehicle License Fee Account in the Transportation Tax Fund for the purposes of making the advances authorized by clause (ii).

(iv) For purposes of Section 15 of Article XI of the California Constitution, the transfers required to be made by this subparagraph shall constitute successor taxes that are otherwise required to be allocated to counties and cities, and as successor taxes, the obligation to make those transfers as required by this subparagraph may not be extinguished nor disregarded in any manner that adversely affects the security of, or the ability of, a county or city to pay the principal and interest on any debts or obligations that were funded or secured by that city's or county's allocated share of motor vehicle license fee revenues.

(b) The offset provisions set forth in subdivision (a) shall be operative as provided by the following:

(1) Paragraph (1) of subdivision (a) shall be operative for vehicle license fees with a final due date in the calendar year beginning on January 1, 1999.

(2) Paragraph (2) of subdivision (a) shall be operative for vehicle license fees with a final due date on or after January 1, 2000, and before July 1, 2001.

(3) Paragraph (3) of subdivision (a) shall be operative for vehicle license fees with a final due date on or after July 1, 2001.

(c) (1) For purposes of this section, ''department'' means the Department of Motor Vehicles with respect to a vehicle license fee offset for a vehicle subject to registration under the Vehicle Code, and the Department of Housing and Community Development with respect to a vehicle license fee offset for a manufactured home, mobilehome, or commercial coach described in Section 18115 of the Health and Safety Code.

(2) For purposes of this section, the ''final due date'' for a license fee is the last date upon which that fee may be paid without being delinquent.

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

In order to timely guarantee the proper reimbursement of local governments for the revenue losses associated with the vehicle license fee offset, it is necessary that this act take immediate effect.

CHAPTER 25

An act to amend Sections 32207, 32320, 32321, 32324, 32325, 32352.5, 32423, 32721, 32722, 32932, 32942, and 32952 of, and to repeal Sections 32213, 32214, 32700, 32701, 32702, 32703, 32710, 32711, 32909, and 32928 of, the Financial Code, and to amend Section 20057 of the Government Code, relating to financial institutions, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 16, 2004. Filed with Secretary of State March 17, 2004.]

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

SECTION 1. Section 32207 of the Financial Code is amended to read:

32207. ''Corporation'' means the State Assistance Fund for Enterprise Business and Industrial Development Corporation.

SEC. 2. Section 32213 of the Financial Code is repealed.

SEC. 3. Section 32214 of the Financial Code is repealed.

SEC. 4. Section 32320 of the Financial Code is amended to read:

32320. Except as provided in Sections 32325 and 32352.5, the board of directors of the corporation shall consist of six members, two official and four public directors.

SEC. 5. Section 32321 of the Financial Code is amended to read:

32321. (a) The official members of the board shall be:

(1) A member of the Governor's cabinet, or his or her designee.

(2) One member of the Energy Commission, selected and appointed by the members of the Energy Commission.

(b) The public members of the board shall be:

(1) One member selected and appointed by the Senate Rules Committee.

(2) One member selected and appointed by the Speaker of the Assembly.

(3) Two members selected and appointed by the Governor as follows:

(A) One member with a minimum three years' experience as an owner, partner, officer, or employee of a California-based small business.

(B) One member with a minimum three years' experience as an officer or employee of a financial institution.

SEC. 6. Section 32324 of the Financial Code is amended to read:

32324. (a) The official directors shall serve without compensation, except that they shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, or at the discretion of the board, may receive a reasonable per diem payment and mileage charge as reimbursement for living and traveling expenses incurred in the performance of duties away from their principal areas of residence. The amount of such per diem payment shall not exceed the rate established by the state for any calendar day. No director shall receive per diem both in the course of his official duties and from the corporation for the same calendar day.

(b) All other directors may, at the discretion of the board, be paid a stipend in addition to reimbursement for their actual and necessary expenses incurred in the performance of their duties or reasonable per diem payment and mileage charge. The amount of any per diem payment shall not exceed the rate established by the state for any calendar day. The

board shall determine the amount of the stipend received by public directors, provided, however, that such stipend shall not exceed one hundred dollars ($100) for any calendar day. Additionally, public directors may not receive stipends for more than 25 days in any calendar year.

SEC. 7. Section 32325 of the Financial Code is amended to read:

32325. If the corporation becomes a federal Community Development Financial Institution (CDFI), in addition to the official and public directors provided for in Section 32321, the board may select not more than three private directors to assist the board in managing the corporation, subject to the following:

(a) Private directors shall serve on the board in an advisory and voluntary capacity.

(b) Each private director shall be knowledgeable about the CDFI target market.

(c) At the discretion of the board, private directors shall be eligible to receive compensation, subject to the limitations contained in subdivision (b) of Section 32324.

SEC. 8. Section 32352.5 of the Financial Code is amended to read:

32352.5. (a) If the corporation becomes a small business development corporation pursuant to Section 32352, the official and public members of the board of directors shall, within 30 days thereafter, appoint three additional directors to the board, who shall be residents of the region to be served by the corporation when acting as a small business development corporation.

(b) For purposes of this section, the three regional directors appointed pursuant to subdivision (a) shall be appointed by the official and public members of the board as full voting members of the board.

SEC. 9. Section 32423 of the Financial Code is amended to read:

32423. The proceeds of the sale of government guaranteed securities shall be allocated to the accounts of the corporation in the following manner:

(a) That portion of the proceeds of the sale of government guaranteed securities which represents the purchase of the principal amount of the securities shall be credited to the enterprise loan fund of the corporation; and

(b) That portion of the proceeds of the sale of government guaranteed securities which represents the purchase of the future interest earnings of the securities shall be credited to the general operating account of the corporation.

SEC. 10. Section 32700 of the Financial Code is repealed.

SEC. 11. Section 32701 of the Financial Code is repealed.

SEC. 12. Section 32702 of the Financial Code is repealed.

SEC. 13. Section 32703 of the Financial Code is repealed.

SEC. 14. Section 32710 of the Financial Code is repealed.

SEC. 15. Section 32711 of the Financial Code is repealed.

SEC. 16. Section 32721 of the Financial Code is amended to read:

32721. The board may consider and adopt rules for the acceptance and disbursement of grants, provided, however, that the cost of administering any grant, less any payment for grant administration made to the corporation by the granting authority, shall in no case exceed 5 percent of the operating budget of the corporation in any calendar year.

SEC. 17. Section 32722 of the Financial Code is amended to read:

32722. The corporation may participate with any federal or state governmental agency, department, board, bureau, or office in any program which is intended to assist the development of the alternative energy industry or to encourage economic development.

SEC. 18. Section 32909 of the Financial Code is repealed.

SEC. 19. Section 32928 of the Financial Code is repealed.

SEC. 20. Section 32932 of the Financial Code is amended to read:

32932. Loans made under this chapter to small businesses shall be at a fixed rate of interest that shall not exceed the prevailing prime interest rate as published in the Wall Street Journal.

SEC. 21. Section 32942 of the Financial Code is amended to read:

32942. Loans shall be approved according to criteria established by a credit committee, chaired by the chief financial officer of the corporation or that officer's designee. The other members of the committee shall be the member of the board appointed by the Energy Commission and the corporate president.

SEC. 22. Section 32952 of the Financial Code is amended to read:

32952. The corporation shall develop a program to assist small business owners in reducing their energy costs by providing technical assistance and information through local chambers of commerce and business organizations.

SEC. 23. Section 20057 of the Government Code is amended to read:

20057. ''Public agency'' also includes the following:

(a) The Commandant, Veterans' Home of California, with respect to employees of the Veterans' Home Exchange and other post fund activities whose compensation is paid from the post fund of the Veterans' Home of California.

(b) Any auxiliary organization operating pursuant to Chapter 7 (commencing with Section 89900) of Part 55 of the Education Code and in conformity with regulations adopted by the Trustees of the California State University and any auxiliary organization operating pursuant to Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of the Education Code and in conformity with regulations adopted by the Board of Governors of the California Community Colleges.

(c) Any student body or nonprofit organization composed exclusively of students of the California State University or community college or of members of the faculty of the California State University or community college, or both, and established for the purpose of providing essential activities related to, but not normally included as a part of, the regular instructional program of the California State University or community college.

(d) A state organization of governing boards of school districts, the primary purpose of which is the advancing of public education through research and investigation.

(e) Any nonprofit corporation whose membership is confined to public agencies as defined in Section 20056.

(f) A section of the California Interscholastic Federation.

(g) Any credit union incorporated under Division 5 (commencing with Section 14000) of the Financial Code, or incorporated pursuant to federal law, with 95 percent of its membership limited to employees who are members of or retired members of this system or the State Teachers' Retirement Plan, and their immediate families, and employees of any credit union. For the purposes of this subdivision, ''immediate family'' means those persons related by blood or marriage who reside in the household of a member of the credit union who is a member of or retired member of this system or the State Teachers' Retirement Plan. The credit union shall pay any costs that are in addition to the normal charges required to enter into a contract with the board. All the payments made by the credit union that are in addition to the normal charges required shall be added to the total amount appropriated by the Budget Act for the administrative expense of this system. For purposes of this subdivision, a credit union is not deemed to be a public agency unless it has entered into a contract with the board pursuant to Chapter 5 (commencing with Section 20460) prior to January 1, 1988. After January 1, 1988, the board may not enter into a contract with any credit union as a public agency.

(h) Any county superintendent of schools that was a contracting agency on July 1, 1983, and any school district or community college district that was a contracting agency with respect to local policemen, as defined in Section 20430, on July 1, 1983.

(i) Any school district or community college district that has established a police department, pursuant to Section 39670 or 72330 of the Education Code, and has entered into a contract with the board on or after January 1, 1990, for school safety members, as defined in Section 20444.

(j) A nonprofit corporation formed for the primary purpose of assisting the development and expansion of the educational, research, and scientific activities of a district agricultural association formed pursuant to Part 3 (commencing with Section 3801) of Division 3 of the

Food and Agricultural Code, and the nonprofit corporation described in the California State Exposition and Fair Law (former Article 3 (commencing with Section 3551) of Chapter 3 of Part 2 of Division 3 of the Food and Agricultural Code, as added by Chapter 15 of the Statutes of 1967).

(k) (1) A public or private nonprofit corporation that operates a regional center for the developmentally disabled in accordance with Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.

(2) A public or private nonprofit corporation, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that operates a rehabilitation facility for the developmentally disabled and provides services under a contract with either (A) a regional center for the developmentally disabled, pursuant to paragraph (3) of subdivision (a) of Section 4648 of the Welfare and Institutions Code, or (B) the Department of Rehabilitation, pursuant to Chapter 4.5 (commencing with Section 19350) of Part 2 of Division 10 of the Welfare and Institutions Code, upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1.

(3) A public or private nonprofit corporation described in this subdivision shall be deemed a ''public agency'' only for purposes of this part and only with respect to the employees of the regional center or the rehabilitation facility described in this subdivision. Notwithstanding any other provision of this part, the agency may elect by appropriate provision or amendment of its contract not to provide credit for service prior to the effective date of its contract.

(*l*) Independent data-processing centers formed pursuant to former Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of the Education Code, as it read on December 31, 1990. An agency included pursuant to this subdivision shall only provide benefits that are identical to those provided to a school member.

(m) Any local agency formation commission.

(n) A nonprofit corporation organized for the purpose of and engaged in conducting a citrus fruit fair as defined in Section 4603 of the Food and Agricultural Code.

(o) (1) A public or private nonprofit corporation that operates an independent living center providing services to severely handicapped people and established pursuant to federal P.L. 93-112, that receives the approval of the board, and that provides at least three of the following services:

(A) Assisting severely handicapped people to obtain personal attendants who provide in-home supportive services.

(B) Locating and distributing information about housing in the community usable by severely handicapped people.

(C) Providing information about financial resources available through federal, state and local government, and private and public agencies to pay all or part of the cost of the in-home supportive services and other services needed by severely handicapped people.

(D) Counseling by people with similar disabilities to aid the adjustment of severely handicapped people to handicaps.

(E) Operation of vans or buses equipped with wheelchair lifts to provide accessible transportation to otherwise unreachable locations in the community where services are available to severely handicapped people.

(2) A public or private nonprofit corporation described in this subdivision shall be deemed a ''public agency'' only for purposes of this part and only with respect to the employees of the independent living center.

(3) Notwithstanding any other provisions of this part, the public or private nonprofit corporation may elect by appropriate provision or amendment of its contract not to provide credit for service prior to the effective date of its contract.

(p) A hospital that is managed by a city legislative body in accordance with Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4.

(q) The Tahoe Transportation District that is established by Article IX of Section 66801.

(r) The California Firefighter Joint Apprenticeship Program formed pursuant to Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code.

(s) A public health department or district that is managed by the governing body of a county of the 15th class, as defined by Sections 28020 and 28036, as amended by Chapter 1204 of the Statutes of 1971.

(t) A nonprofit corporation or association conducting an agricultural fair pursuant to Section 25905 may enter into a contract with the board for the participation of its employees as members of this system, upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1. The nonprofit corporation or association shall be deemed a ''public agency'' only for this purpose.

(u) An auxiliary organization established pursuant to Article 2.5 (commencing with Section 69522) of Chapter 2 of Part 42 of the Education Code upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1. The auxiliary organization is a ''public agency'' only for this purpose.

(v) The Western Association of Schools and Colleges upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1. The association shall be deemed a ''public agency'' only for this purpose.

(w) The State Assistance Fund for Enterprise, Business, and Industrial Development Corporation upon obtaining a written opinion from the United States Department of Labor as described in Section 20057.1.

SEC. 24. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to take effect as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 26

An act to amend Section 19134 of the Government Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 16, 2004. Filed with Secretary of State March 17, 2004.]

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

SECTION 1. Section 19134 of the Government Code is amended to read:

19134. (a) Personal services contracts entered into by a state agency in accordance with Section 19130 for persons providing janitorial and housekeeping services, custodians, food service workers, laundry workers, window cleaners, and security guard services shall include provisions for employee wages and benefits that are valued at least 85 percent of the state employer cost of wages and benefits provided to state employees for performing similar duties.

(b) For purposes of this section, ''benefits'' includes ''health, dental, retirement, and vision benefits, and holiday, sick, and vacation pay.''

(c) (1) The Department of Personnel Administration shall establish annually the state employer wage and benefit costs for workers covered pursuant to this section.

(2) Benefit costs shall be established using rates based on single employee, employee plus one dependent, and employee plus two or more dependents, or the costs may be based on a blended rate, subject to the determination of the Department of Personnel Administration.

(d) In lieu of providing actual benefits, contractors may comply with this section by a cash payment to employees equal to the applicable determination under subdivision (c).

(e) Failure to provide benefits or cash-in-lieu to employees as required under this section shall be deemed to be a material breach for any contract for personal services covered by this section.

(f) The Department of General Services and the Department of Personnel Administration may adopt guidelines and regulations to implement the requirements of this section.

(g) This section applies to all contracts exceeding 90 days.

(h) Holiday pay shall be provided to employees of contractors providing services specified in subdivision (a) on any state holiday that the state facility in which the services are being provided is closed.

(i) This section also applies to wages and benefits of employees of subcontractors providing services specified in subdivision (a) in state-leased facilities where the facility is at least 50,000 square feet in area and the state leases all of the occupied floorspace of the facility.

(j) With the exception of subdivision (h), this section does not apply to personal services contracts for the services described in subdivision (a) performed by employees of nonprofit organizations that are employed in accordance with any of the following:

(1) A special license issued pursuant to Section 1191.5 of the Labor Code.

(2) A special certificate issued pursuant to Section 214 of Title 29 of the United States Code.

(3) A community rehabilitation plan described in Sections 19152 and 19404 of the Welfare and Institutions Code.

(4) A habilitation services program as described in Sections 19352 and 19356.6 of the Welfare and Institutions Code.

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

In order to preserve eligibility to bid on state contracts for contractors employing persons with developmental disabilities, it is necessary that this act take effect immediately.

CHAPTER 27

An act to amend Section 5563.5 of, and to add Section 5540.1 to, the Public Resources Code, relating to park and open-space districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 1, 2004. Filed with Secretary of State April 1, 2004.]

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

SECTION 1. Section 5563.5 of the Public Resources Code is amended to read:

5563.5. Notwithstanding Sections 5540 and 5563, the Board of Directors of the Midpeninsula Regional Open Space District may, and the Board of Directors of the East Bay Regional Park District with respect to the Alameda Creek Quarries located within the County of Alameda may, without obtaining the consent of the voters, lease real property for a term not exceeding 50 years. A lease entered into pursuant to this section shall be authorized by a resolution adopted by the affirmative votes of at least two-thirds of the members of the board, upon making an express finding that the purpose of the lease is for park or open-space purposes, or for an historic preservation, recreation, or agricultural purpose which is compatible with public use and enjoyment of the real property.

SEC. 2. Section 5540.1 is added to the Public Resources Code, to read:

5540.1. Notwithstanding Section 5540, the Midpeninsula Regional Open Space District shall not exercise the power of eminent domain to acquire any real property or any interest in real property in the San Mateo County Coastal Annexation Area, as defined in the Resolution of Application for Annexation Proceedings No. 03-20, which was adopted by the Board of Directors of the Midpeninsula Regional Open Space District on June 6, 2003.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances applicable only to this proposed project of the Midpeninsula Regional Open Space District. The district has adopted an ordinance and policy prohibiting the use of the power of eminent domain in an area of San Mateo County currently proposed to be annexed to the district. This policy was adopted due to the special and unique circumstances of the particular annexation project and the particular nature of the territory proposed for annexation, and in response to input from a Citizens' Advisory Committee formed to recommend policies particular to this proposed project. The Legislature further finds and declares that the need to limit a district's condemnation power is not common to all districts formed under laws governing the formation, powers, and duties of park and open-space districts and, therefore, warrants special legislation.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

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

In order that the Midpeninsula Regional Open Space District's policies regarding eminent domain for the district's annexation project be incorporated in that project at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 28

An act to amend Section 1789.35 of the Civil Code, relating to deferred deposit transactions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 1, 2004. Filed with Secretary of State April 1, 2004.]

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

SECTION 1. Section 1789.35 of the Civil Code, as amended by Section 6 of Chapter 17 of the Statutes of 2004, is amended to read:

1789.35. (a) A check casher shall not charge a fee for cashing a payroll check or government check in excess of 3 percent if identification is provided by the customer, or 3.5 percent without the provision of identification, of the face amount of the check, or three dollars ($3), whichever is greater. Identification, for purposes of this section, is limited to a California driver's license, a California identification card, or a valid United States military identification card.

(b) (1) A check casher may charge a fee of no more than ten dollars ($10) to set up an initial account and issue an optional identification card for providing check cashing services. A replacement optional identification card may be issued at a cost not to exceed five dollars ($5).

(2) Notwithstanding the provisions of paragraph (1), commencing March 15, 2004, no check casher shall charge the fee authorized in paragraph (1) or any similar or related fee for deferred deposit transactions.

(c) A check casher shall provide a receipt to the customer for each transaction.

(d) Subject to the limitations of Section 1789.33, a check casher may charge a fee for cashing a personal check, as posted pursuant to Section 1789.30, for immediate deposit in an amount not to exceed 12 percent of the face value of the check or for deferred deposit in an amount not to exceed 15 percent of the face value of the check.

(e) A check casher shall not enter into an agreement for a deferred deposit with a customer during the period of time that an earlier written agreement for a deferred deposit for the same customer is in effect.

(f) A check casher who enters into a deferred deposit agreement and accepts a check passed on insufficient funds, or any assignee of that check casher, shall not be entitled to recover damages in any action brought pursuant to, or governed by, Section 1719.

(g) For a transaction pursuant to Section 1789.33, a fee not to exceed fifteen dollars ($15) may be charged for the return of a dishonored check by a depositary institution. The fee may be collected by a check casher who holds a valid permit issued pursuant to Section 1789.37, when acting under the authority of that permit.

(h) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a check casher pursuant to a deferred deposit agreement.

(i) Any person who violates any provision of this section shall be liable for a civil penalty not to exceed two thousand dollars ($2,000) 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. Any action brought pursuant to this subdivision shall be commenced within four years of the date on which the act or transaction upon which the action is based occurred.

(j) A willful violation of this section is a misdemeanor.

(k) Any person who is injured by any violation of this section may bring an action for the recovery of damages, an equity proceeding to restrain and enjoin those violations, or both. The amount awarded may be up to three times the damages actually incurred, but in no event less than the amount paid by the aggrieved consumer to a person subject to this section. If the plaintiff prevails, the plaintiff shall be awarded reasonable attorney's fees and costs. If a court determines by clear and convincing evidence that a breach or violation was willful, the court, in its discretion, may award punitive damages in addition to the amounts set forth above.

(*l*) This section shall become inoperative on December 31, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 1789.35 of the Civil Code, as amended by Section 7 of Chapter 17 of the Statutes of 2004, is amended to read:

1789.35. (a) A check casher shall not charge a fee for cashing a payroll check or government check in excess of 3 percent if identification is provided by the customer, or 3.5 percent without the provision of identification, of the face amount of the check, or three

dollars ($3), whichever is greater. Identification, for purposes of this section, is limited to a California driver's license, a California identification card, or a valid United States military identification card.

(b) A check casher may charge a fee of no more than ten dollars ($10) to set up an initial account and issue an optional identification card for providing check cashing services. A replacement optional identification card may be issued at a cost not to exceed five dollars ($5).

(c) A check casher shall provide a receipt to the customer for each transaction.

(d) A check casher may charge a fee for cashing a personal check, as posted pursuant to Section 1789.30, for immediate deposit in an amount not to exceed 12 percent of the face value of the check.

(e) Any person who violates any provision of this section shall be liable for a civil penalty not to exceed two thousand dollars ($2,000) 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. Any action brought pursuant to this subdivision shall be commenced within four years of the date on which the act or transaction upon which the action is based occurred.

(f) A willful violation of this section is a misdemeanor.

(g) Any person who is injured by any violation of this section may bring an action for the recovery of damages, an equity proceeding to restrain and enjoin those violations, or both. The amount awarded may be up to three times the damages actually incurred, but in no event less than the amount paid by the aggrieved consumer to a person subject to this section. If the plaintiff prevails, the plaintiff shall be awarded reasonable attorney's fees and costs. If a court determines by clear and convincing evidence that a breach or violation was willful, the court, in its discretion, may award punitive damages in addition to the amounts set forth above.

(h) This section shall become operative December 31, 2004.

SEC. 3. Notwithstanding the December 31, 2004, operative and inoperative dates specified in the sections amended by Sections 1 and 2 of this act, the provisions of those sections may become operative and inoperative on an earlier date established by an executive order issued by the Governor if that date is not less than 30 days after the issuance of the executive order.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide adequate time for the provisions of this act to be implemented, it is necessary that this act take effect immediately.

CHAPTER 29

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 1, 2004. Filed with Secretary of State April 1, 2004.]

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

SECTION 1. This act shall be known and may be cited as the First Validating Act of 2004.

SEC. 2. As used in this act:

(a) ''Public body'' means the state and all departments, agencies, boards, commissions, and authorities of the state. ''Public body'' also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts of any kind.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community redevelopment agencies.

Community rehabilitation districts.

Community services districts.

Conservancy districts.
Cotton pest abatement districts.
County boards of education.
County drainage districts.
County flood control and water districts.
County free library systems.
County maintenance districts.
County sanitation districts.
County service areas.
County transportation commissions.
County water agencies.
County water authorities.
County water districts.
County waterworks districts.
Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Distribution districts of any public body.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.

Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
School facilities improvement districts.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Special municipal tax districts.

Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts' public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

(b) ''Bonds'' means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) ''Hereafter'' means any time subsequent to the effective date of this act.

(d) ''Heretofore'' means any time prior to the effective date of this act.

(e) ''Now'' means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law, are hereby declared to have been legally organized and to be legally functioning as those public bodies. Every public body, heretofore described, shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of those public bodies regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into those public bodies or for the annexation of those public bodies to any other public body or for the detachment, withdrawal, or exclusion of territory from any public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of public bodies and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply legislative authorization as may be necessary to authorize, confirm, and validate any acts and

proceedings heretofore taken pursuant to authority the Legislature could have supplied or provided for in the law under which those acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent that the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the period of 30 days from and after the effective date of this act.

(d) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(e) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, detachment or exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of those matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period allowed for legal action beyond the period that it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to validate the organization, boundaries, acts, proceedings, and bonds of public bodies as soon as possible, it is necessary that this act take immediate effect.

CHAPTER 30

An act to amend Section 1203.9 of the Penal Code, relating to probation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 12, 2004. Filed with Secretary of State April 13, 2004.]

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

SECTION 1. Section 1203.9 of the Penal Code is amended to read:

1203.9. (a) Whenever any person is released upon probation, the case may be transferred to any court of the same rank in any other county in which the person resides permanently, meaning the stated intention to remain for the duration of probation; provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer. The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.

(b) Except as provided in subdivision (c), if the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis.

(c) Whenever a person is granted probation under Section 1210.1, the sentencing court may, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county.

(d) The order of transfer shall contain an order committing the probationer to the care and custody of the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the transfer to be paid to the sending county in accordance with Section 1203.1b. A copy of the orders and probation reports shall be transmitted to the court and probation officer of the receiving county

within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper.

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

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

In order to assure effective administration of special probation transfer procedures as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 31

An act to add Section 1228.6 to the Government Code, relating to public officers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 12, 2004. Filed with Secretary of State April 13, 2004.]

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

SECTION 1. Section 1228.6 is added to the Government Code, to read:

1228.6. Notwithstanding Section 1063 or any other provision of law, the Calaveras County Board of Supervisors, at any time during the 2004 calendar year may grant the county sheriff, upon request, a leave of absence without salary, for a period not to exceed one year from the date of deployment, to participate in the United States Department of State International Police Mission in Iraq. Upon termination of that service, the sheriff shall have the right to be restored to his or her former position.

SEC. 2. The Legislature finds and declares that a special act is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of unique circumstances applicable in Calaveras County to expedite the ability of the county sheriff to assist the United States Government's activities in Iraq.

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

In order that the Calaveras County Sheriff may leave the United States in the near future to assist the United States Government's activities in Iraq for periods exceeding six months, it is necessary that this bill take effect immediately.

CHAPTER 32

An act to amend Section 68120 of the Education Code, relating to public postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 12, 2004. Filed with Secretary of State April 13, 2004.]

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

SECTION 1. Section 68120 of the Education Code, as amended by Section 2 of Chapter 347 of the Statutes of 2001, is amended to read:

68120. (a) Notwithstanding any other provision of law, no mandatory systemwide fees or tuition of any kind shall be required of or collected by the Regents of the University of California, the Board of Directors of the Hastings College of the Law, or the Trustees of the California State University from any surviving spouse or surviving child, natural or adopted, of a deceased person who met all of the following requirements:

(1) He or she was a resident of this state.

(2) He or she was employed by a public agency, or was a contractor, or an employee of a contractor, performing services for a public agency.

(3) His or her principal duties consisted of active law enforcement service or active fire suppression and prevention. This section shall not apply to a person whose principal duties were clerical, even if he or she was subject to occasional call or was occasionally called upon to perform

duties within the scope of active law enforcement or active fire suppression and prevention.

(4) He or she was killed in the performance of active law enforcement or active fire suppression and prevention duties, or died as a result of an accident or an injury caused by external violence or physical force, incurred in the performance of his or her active law enforcement or active fire suppression and prevention duties.

(b) Notwithstanding subdivision (a), a person who qualifies for the waiver of mandatory systemwide fees and tuition under this section as a surviving child of a contractor, or of an employee of a contractor, who performed services for a public agency shall, in addition to the requirements set forth in subdivision (a), meet both of the following requirements:

(1) Enrollment as an undergraduate student at a campus of the University of California or the California State University.

(2) Documentation that his or her annual income, including the value of any support received from a parent, does not exceed the maximum household income and asset level for an applicant for a Cal Grant B award, as set forth in Section 69432.7.

(c) As used in this section:

(1) ''Contractor'' or ''employee of a contractor'' does not include a security guard or security officer, as defined in Section 7582.1 of the Business and Professions Code.

(2) ''Public agency'' means the state or any city, city and county, county, district, or other local authority or public body of or within the state.

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

In order to prevent hardship for those students currently attending public postsecondary institutions who have received waivers for tuition and fees under Section 68120 of the Education Code as it existed prior to January 1, 2004, it is necessary that this act take effect immediately.

CHAPTER 33

An act to amend Sections 22, 102.3, 473, 473.15, 473.2, 473.3, 473.4, 473.5, 473.6, 474, 474.1, 474.2, 474.3, 474.4, 1620.1, 1628, 1638.7, 4001.5, 4934.2, 5000, 5811, 6704.1, 7000.5, 7316, 7612, 8000, and 9610 of, and to add and repeal Section 1628.2 of, the Business and Professions Code, to amend Sections 94779.1, 94779.3, 94990, and

94995 of the Education Code, and to amend Section 9148.8 and 9148.52 of the Government Code, relating to professions and vocations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 12, 2004. Filed with Secretary of State April 13, 2004.]

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

SECTION 1. Section 22 of the Business and Professions Code is amended to read:

22. (a) ''Board,'' as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include ''bureau,'' ''commission,'' ''committee,'' ''department,'' ''division,'' ''examining committee,'' ''program,'' and ''agency.''

(b) Whenever the regulatory program of a board that is subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2 (commencing with Section 473), is taken over by the department, that program shall be designated as a ''bureau.''

SEC. 2. Section 102.3 of the Business and Professions Code is amended to read:

102.3. (a) The director may enter into an interagency agreement with an appropriate entity within the Department of Consumer Affairs as provided for in Section 101 to delegate the duties, powers, purposes, responsibilities, and jurisdiction that have been succeeded and vested with the department, of a board, as defined in Section 477, which became inoperative and was repealed in accordance with Chapter 908 of the Statutes of 1994.

(b) (1) Where, pursuant to subdivision (a), an interagency agreement is entered into between the director and that entity, the entity receiving the delegation of authority may establish a technical committee to regulate, as directed by the entity, the profession subject to the authority that has been delegated. The entity may delegate to the technical committee only those powers that it received pursuant to the interagency agreement with the director. The technical committee shall have only those powers that have been delegated to it by the entity.

(2) Where the entity delegates its authority to adopt, amend, or repeal regulations to the technical committee, all regulations adopted, amended, or repealed by the technical committee shall be subject to the review and approval of the entity.

(3) The entity shall not delegate to a technical committee its authority to discipline a licentiate who has violated the provisions of the

applicable chapter of the Business and Professions Code that is subject to the director's delegation of authority to the entity.

(c) An interagency agreement entered into, pursuant to subdivision (a), shall continue until such time as the licensing program administered by the technical committee has undergone a review by the Joint Committee on Boards, Commissions, and Consumer Protection to evaluate and determine whether the licensing program has demonstrated a public need for its continued existence. Thereafter, at the director's discretion, the interagency agreement may be renewed.

SEC. 3. Section 473 of the Business and Professions Code is amended to read:

473. (a) There is hereby established the Joint Committee on Boards, Commissions, and Consumer Protection.

(b) The Joint Committee on Boards, Commissions, and Consumer Protection 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 Committee on Boards, Commissions, and Consumer Protection 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 Committee on Boards, Commissions, and Consumer Protection.

(e) The Joint Committee on Boards, Commissions, and Consumer Protection is authorized to act until January 1, 2012, at which time the committee's existence shall terminate.

SEC. 4. Section 473.15 of the Business and Professions Code is amended to read:

473.15. (a) The Joint Committee on Boards, Commissions, and Consumer Protection established pursuant to Section 473 shall review the following boards established by initiative measures, as provided in this section:

(1) The State Board of Chiropractic Examiners established by an initiative measure approved by electors November 7, 1922.

(2) The Osteopathic Medical Board of California established by an initiative measure approved June 2, 1913, and acts amendatory thereto approved by electors November 7, 1922.

(b) The Osteopathic Medical Board of California shall prepare an analysis and submit a report as described in subdivisions (a) to (e),

inclusive, of Section 473.2, to the Joint Committee on Boards, Commissions, and Consumer Protection on or before September 1, 2004.

(c) The State Board of Chiropractic Examiners shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the Joint Committee on Boards, Commissions, and Consumer Protection on or before September 1, 2005.

(d) The Joint Committee on Boards, Commissions, and Consumer Protection shall, during the interim recess of 2004 for the Osteopathic Medical Board of California, and during the interim recess of 2005 for the State Board of Chiropractic Examiners, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, the public, and the regulated industry. In that hearing, each board shall be prepared to demonstrate a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

(e) The Joint Committee on Boards, Commissions, and Consumer Protection shall evaluate and make determinations pursuant to Section 473.4 and shall report its findings and recommendations to the department as provided in Section 473.5.

(f) In the exercise of its inherent power to make investigations and ascertain facts to formulate public policy and determine the necessity and expediency of contemplated legislation for the protection of the public health, safety, and welfare, it is the intent of the Legislature that the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California be reviewed pursuant to this section.

(g) It is not the intent of the Legislature in requiring a review under this section to amend the initiative measures that established the State Board of Chiropractic Examiners or the Osteopathic Medical Board of California.

SEC. 5. 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 Committee on Boards, Commissions, and Consumer Protection 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. 6. 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 Committee on Boards, Commissions, and Consumer Protection 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. 7. Section 473.4 of the Business and Professions Code is amended to read:

473.4. (a) The Joint Committee on Boards, Commissions, and Consumer Protection shall evaluate and determine whether a board or regulatory program has demonstrated a public need for the continued existence of the board or regulatory program and for the degree of regulation the board or regulatory program implements based on the following factors and minimum standards of performance:

(1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.

(2) Whether the basis or facts that necessitated the initial licensing or regulation of a practice or profession have changed.

(3) Whether other conditions have arisen that would warrant increased, decreased, or the same degree of regulation.

(4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of 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.

(5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource, and personnel matters.

(6) Whether an analysis of board operations indicates that the board performs its statutory duties efficiently and effectively.

(7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in

its decisions rather than participation only by the industry and individuals it regulates.

(8) Whether the 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.

(9) Whether complaint, investigation, powers to intervene, and disciplinary procedures adequately protect the public and whether final dispositions of complaints, investigations, restraining orders, and disciplinary actions are in the public interest; or if it is, instead, self-serving to the profession, industry or individuals being regulated by the board.

(10) Whether the scope of practice of the regulated profession or occupation contributes to the highest utilization of personnel and whether entry requirements encourage affirmative action.

(11) Whether administrative and statutory changes are necessary to improve board operations to enhance the public interest.

(b) The Joint Committee on Boards, Commissions, and Consumer Protection shall consider alternatives to placing responsibilities and jurisdiction of the board under the Department of Consumer Affairs.

(c) Nothing in this section precludes any board from submitting other appropriate information to the Joint Committee on Boards, Commissions, and Consumer Protection.

SEC. 8. Section 473.5 of the Business and Professions Code is amended to read:

473.5. The Joint Committee on Boards, Commissions, and Consumer Protection shall report its findings and preliminary recommendations to the department for its review, and, within 90 days of receiving the report, the department shall report its findings and recommendations to the Joint Committee on Boards, Commissions, and Consumer Protection during the next year of the regular session that follows the hearings described in Section 473.3. The committee shall then 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 department and the committee and whether each board or function scheduled for repeal shall be terminated, continued, or reestablished, and whether its functions should be revised. If the committee or the department deems it advisable, the report may include proposed bills to carry out its recommendations.

SEC. 9. Section 473.6 of the Business and Professions Code is amended to read:

473.6. The chairpersons of the appropriate policy committees of the Legislature may refer to the Joint Committee on Boards, Commissions,

and Consumer Protection for review of any legislative issues or proposals to create new licensure or regulatory categories, increase licensing requirements, or create a new licensing board under the provisions of this code or pursuant to Chapter 1.5 (commencing with Section 9148) of Part 1 of Division 2 of Title 2 of the Government Code.

SEC. 10. Section 474 of the Business and Professions Code is amended to read:

474. The Joint Committee on Boards, Commissions, and Consumer Protection 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.

SEC. 11. Section 474.1 of the Business and Professions Code is amended to read:

474.1. Prior to recommending the termination, continuation, or reestablishment of any board or any of the state board's functions, the Joint Committee on Boards, Commissions, and Consumer Protection 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.

SEC. 12. Section 474.2 of the Business and Professions Code is amended to read:

474.2. All state boards to which this chapter applies shall prepare an analysis and submit a report to the Joint Committee on Boards, Commissions, and Consumer Protection 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.

SEC. 13. Section 474.3 of the Business and Professions Code is amended to read:

474.3. (a) The Joint Committee on Boards, Commissions, and Consumer Protection 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 Committee on Boards, Commissions, and Consumer Protection 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 Committee on Boards, Commissions, and Consumer Protection, the Legislative Analyst's Office, from submitting other appropriate information to the Joint Committee on Boards, Commissions, and Consumer Protection.

SEC. 14. Section 474.4 of the Business and Professions Code is amended to read:

474.4. The Joint Committee on Boards, Commissions, and Consumer Protection 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. 15. Section 1620.1 of the Business and Professions Code is amended to read:

1620.1. The Department of Consumer Affairs, in conjunction with the board and the Joint Committee on Boards, Commissions, and Consumer Protection, shall review the scope of practice for dental auxiliaries. The department shall employ the services of an independent consultant to perform this comprehensive analysis. The department shall be authorized to enter into an interagency agreement or be exempted from obtaining sole source approval for a sole source contract. The board shall pay for all of the costs associated with this comprehensive analysis. The department shall report its findings and recommendations to the Legislature by September 1, 2002.

SEC. 16. Section 1628 of the Business and Professions Code is amended to read:

1628. Any person over 18 years of age is eligible to take an examination before the board upon making application therefor and meeting all of the following requirements:

(a) Paying the fee for applicants for examination provided by this chapter.

(b) Furnishing satisfactory evidence of having graduated from a reputable dental college approved by the board; provided, also, that applicants furnishing evidence of having graduated after 1921 shall also present satisfactory evidence of having completed at dental school or schools the full number of academic years of undergraduate courses required for graduation. For purposes of this article, ''reputable dental college approved by the board'' or ''approved dental school'' include a foreign dental school accredited by a body that has a reciprocal accreditation agreement with any commission or accreditation organization whose findings are accepted by the board.

(c) Furnishing the satisfactory evidence of financial responsibility or liability insurance for injuries sustained or claimed to be sustained by a dental patient in the course of the examination as a result of the applicant's actions.

(d) If the applicant has been issued a degree of doctor of dental medicine or doctor of dental surgery by a foreign dental school, he or she shall furnish all of the following documentary evidence to the board:

(1) That he or she has completed, in a dental school or schools approved by the board pursuant to Section 1636.4, a resident course of professional instruction in dentistry for the full number of academic years of undergraduate courses required for graduation.

(2) Subsequent thereto, he or she has been issued by the dental school a dental diploma or a dental degree, as evidence of the successful completion of the course of dental instruction required for graduation.

(e) Any applicant who has been issued a dental diploma from a foreign dental school that has not, at the time of his or her graduation from the school, been approved by the board pursuant to Section 1636.4 shall not be eligible for examination until the applicant has successfully completed a minimum of two academic years of education at a dental college approved by the board pursuant to Article 1 (commencing with Section 1024) of Chapter 2 of Division 10 of Title 16 of the California Code of Regulations and has been issued a degree of doctor of dental medicine or doctor of dental surgery or its equivalent. This subdivision shall not apply to applicants who have successfully completed the requirements of Section 1636 as it read before it was repealed on January 1, 2004, on or before December 31, 2003, or who have successfully completed the requirements of Section 1628.2 on or before December 31, 2008. An applicant who has successfully completed the requirements of Section 1636 as it read before it was repealed on January 1, 2004, on or before December 31, 2003, or who has successfully completed the requirements of Section 1628.2 on or before December 31, 2008, shall be eligible to take the examination required by Section 1632, subject to the limitations set forth in Section 1632.5.

(f) Subdivisions (d) and (e) do not apply to a person who has been issued a degree of doctor of dental medicine or doctor of dental surgery by a foreign dental school accredited by a body that has a reciprocal accreditation agreement with any commission or accreditation organization whose findings are accepted by the board.

SEC. 17. Section 1628.2 is added to the Business and Professions Code, to read:

1628.2. (a) A person who has been issued a degree of doctor of dental medicine or doctor of dental surgery by a foreign dental school that is not approved by the board pursuant to Section 1636.4 shall be exempt from the requirements of subdivision (e) of Section 1628 if he or she meets all of the following requirements:

(1) He or she furnishes documentary evidence satisfactory to the board of both of the following:

(A) That he or she has completed in a dental school or schools a resident course of professional instruction in dentistry for the full number of academic years of undergraduate courses required for graduation.

(B) That subsequent thereto, he or she has been issued by the dental school a dental diploma or a dental degree, as evidence of successful completion of the course of dental instruction required for graduation.

(2) He or she passed Parts I and II of the National Board of Dental Examiners' examination on or before December 31, 2003.

(3) He or she has passed an examination, on or before December 31, 2008, in which the applicant is required to demonstrate his or her skill in restorative technique, subject to the following:

(A) An applicant who obtains an overall average grade of 75 percent in the restorative technique examination and a grade of 75 percent or more in two of the three subsections shall be deemed to have passed the examination. An applicant who obtains a grade of 85 percent in any subsection of the examination but does not pass the examination is exempt from retaking that subsection for two years following the date of the examination in which the grade of 85 percent was obtained.

(B) Applications for this examination shall be submitted by mail only. An applicant for the examination shall submit to the board a mailing address for the applicant that is located within the United States. That mailing address shall be the sole address that the board is required to use to communicate with the applicant.

(C) An applicant shall provide to the board copies of their passing scores on Parts I and II of the National Board of Dental Examiners examination within 90 days of the enactment of Assembly Bill No. 1467 of the 2003–04 Regular Legislative Session. An applicant who has previously taken the restorative technique examination or who has previously provided his or her passing scores on Parts I and II of the National Board of Dental Examiners shall not be subject to the requirement of this subparagraph.

(D) (i) Notwithstanding Section 135, an applicant who fails to pass the examination under this section or Section 1636, as repealed on January 1, 2004, after four attempts or who fails to pass the examination on or before December 31, 2008, shall not be eligible for further reexamination under this paragraph, and shall not be eligible for the exemption from the requirements of subdivision (e) of Section 1628. Failure by an applicant to appear for the examination without good cause, as determined by the board, constitutes a failure to pass the examination for purposes of this paragraph.

(ii) In order to be eligible to reapply to take the examination, an applicant who fails to pass the examination or fails to appear for the examination, and who has not used all four examination attempts, shall submit to the board a letter of intent stating his or her intent to reapply to take the examination. The applicant shall submit this letter to the board within 45 days of the board mailing notification to him or her of failure to pass the examination, or, if the applicant failed to appear for

the examination, within 45 days of the examination date for which he or she failed to appear.

The requirements of this clause shall not be construed to require the applicant to take the next examination offered by the board, however, it is the intent of the Legislature that applicants apply for reexaminations in a timely manner.

(iii) An applicant who believes he or she has good cause for failing to appear at a scheduled examination shall state the grounds supporting the good cause in a letter to the board. If the board accepts those grounds as good cause, the applicant may reapply for a future examination in the usual manner used by the board for scheduling applicants for an examination, and the examination for which the applicant failed to appear shall not count against the maximum four attempts permitted by clause (i). If the board does not accept those grounds as good cause, the examination for which the applicant failed to appear shall be counted as one of those four attempts.

(iv) If the applicant fails to comply with the requirements of clause (ii), he or she shall no longer qualify to take any future examination required by this paragraph, and shall be subject to the requirements of subdivision (e) of Section 1628.

(E) If all qualified applicants have exhausted the four examination attempts permitted by subparagraph (D), or become ineligible to take the examination, the board may, prior to January 1, 2009, cease to offer administration of that examination at any time thereafter.

(4) Failure to meet any of the requirements of paragraphs (1) to (3), inclusive, including, but not limited to, the requirement of subparagraph (C) of paragraph (3) that an applicant provide to the board copies of his or her passing scores on Parts I and II of the National Board of Dental Examiners examination within 90 days of the operative date of Assembly Bill No. 1467 of the 2003–04 Regular Legislative Session, shall make an applicant ineligible for the exemption from the requirements of subdivision (e) of Section 1628 provided by this section.

(b) It is the intent of the Legislature that the restorative technique examination provided for by this section, including the eligibility provisions, be a continuation of the restorative technique examination provided for in Section 1636, as repealed on January 1, 2004, and that an applicant for the examination have no more than a total of four attempts to take the restorative technique examination.

(c) This section 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.

SEC. 18. Section 1638.7 of the Business and Professions Code is amended to read:

1638.7. The next occupational analysis of dental licensees and oral and maxillofacial facial surgeons pursuant to Section 139 shall include a survey of the training and practices of oral and maxillofacial surgeons and, upon completion of that analysis, a report shall be made to the Joint Committee on Boards, Commissions, and Consumer Protection regarding the findings.

SEC. 19. Section 4001.5 of the Business and Professions Code is amended to read:

4001.5. The Joint Committee on Boards, Commissions, and Consumer Protection shall review the state's shortage of pharmacists and make recommendations on a course of action to alleviate the shortage, including, but not limited to, a review of the current California pharmacist licensure examination.

SEC. 20. Section 4934.2 of the Business and Professions Code is amended to read:

4934.2. The board shall conduct the following studies and reviews, and shall report its findings and recommendations to the department and the Joint Committee on Boards, Commissions, and Consumer Protection no later that September 1, 2004:

(a) The board shall conduct a comprehensive study of the use of unlicensed acupuncture assistants and the need to license and regulate those assistants.

(b) The board shall study and recommend ways to improve the frequency and consistency of their auditing and the quality and relevance of their courses.

SEC. 21. Section 5000 of the Business and Professions Code is amended to read:

5000. There is in the Department of Consumer Affairs the California Board of Accountancy, which consists of 15 members, seven of whom shall be licensees, and eight of whom shall be public members who shall not be licentiates of the board or registered by the board. The board has the powers and duties conferred by this chapter.

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

This section shall become inoperative on July 1, 2005, and as of January 1, 2006, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2006, deletes or extends the dates on which this section becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of the board shall be limited to reports or studies specified in this chapter and those issues identified by the Joint Committee on Boards, Commissions, and Consumer Protection and the board regarding the implementation of new licensing requirements.

SEC. 22. Section 5811 of the Business and Professions Code is amended to read:

5811. An interior design organization issuing stamps under Section 5801 shall provide to the Joint Committee on Boards, Commissions, and Consumer Protection 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. 23. Section 6704.1 of the Business and Professions Code is amended to read:

6704.1. (a) The Department of Consumer Affairs, in conjunction with the board, and the Joint Committee on Boards, Commissions, and Consumer Protection shall review the engineering branch titles specified in Section 6732 to determine whether certain title acts should be eliminated from this chapter, retained, or converted to practice acts similar to civil, electrical, and mechanical engineering, and whether supplemental engineering work should be permitted for all branches of engineering. The department shall contract with an independent consulting firm to perform this comprehensive analysis of title act registration.

(b) The independent consultant shall perform, but not be limited to, the following: (1) meet with representatives of each of the engineering branches and other professional groups; (2) examine the type of services and work provided by engineers in all branches of engineering and interrelated professions within the marketplace, to determine the interrelationship that exists between the various branches of engineers and other interrelated professions; (3) review and analyze educational requirements of engineers; (4) identify the degree to which supplemental or ''overlapping'' work between engineering branches and interrelated professions occurs; (5) review alternative methods of regulation of engineers in other states and what impact the regulations would have if adopted in California; (6) identify the manner in which local and state agencies utilize regulations and statutes to regulate engineering work; and, (7) recommend changes to existing laws regulating engineers after

considering how these changes may effect the health, safety, and welfare of the public.

(c) The board shall reimburse the department for costs associated with this comprehensive analysis. The department shall report its findings and recommendations to the Legislature by September 1, 2002.

SEC. 24. Section 7000.5 of the Business and Professions Code is amended to read:

7000.5. (a) There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 15 members.

(b) The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of this board by the department shall be limited to only those unresolved issues identified by the Joint Committee on Boards, Commissions, and Consumer Protection.

(c) This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 25. Section 7316 of the Business and Professions Code is amended to read:

7316. (a) The practice of barbering is all or any combination of the following practices:

(1) Shaving or trimming the beard or cutting the hair.

(2) Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances.

(3) Singeing, shampooing, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics.

(4) Applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face, or neck.

(5) Hairstyling of all textures of hair by standard methods which are current at the time of the hairstyling.

(b) The practice of cosmetology is all or any combination of the following practices:

(1) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.

(2) Massaging, cleaning or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(3) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(4) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.

(5) Cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person.

(6) Massaging, cleansing, treating, or beautifying the hands or feet of any person.

(c) Within the practice of cosmetology there exist the specialty branches of skin care, and nail care.

(1) Skin care is any one or more of the following practices:

(A) Giving facials, applying makeup, giving skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing, or applying eyelashes to any person.

(B) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(C) Massaging, cleaning, or stimulating the face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(2) Nail care is the practice of cutting, trimming, polishing, coloring, tinting, cleansing, or manicuring the nails of any person or massaging, cleansing, or beautifying the hands or feet of any person.

(d) The practice of barbering and the practice of cosmetology do not include any of the following:

(1) The mere sale, fitting, or styling of wigs or hairpieces.

(2) Natural hair braiding. Natural hair braiding is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, provided that the service does not include haircutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

(3) Threading. Threading is a technique that results in removing hair by twisting thread around unwanted hair and pulling it from the skin. This paragraph shall become inoperative on July 1, 2007.

(e) The board shall report any complaints received on the practice of threading to the department and the Joint Committee on Boards, Commissions, and Consumer Protection no later than September 1, 2005.

(f) Notwithstanding paragraph (2) of subdivision (d), a person who engages in natural hairstyling, which is defined as the provision of natural hair braiding services together with any of the services or

procedures defined within the regulated practices of barbering or cosmetology, is subject to regulation pursuant to this chapter and shall obtain and maintain a barbering or cosmetology license as applicable to the services respectively offered or performed.

(g) Electrolysis is the practice of removing hair from, or destroying hair on, the human body by the use of an electric needle only.

''Electrolysis'' as used in this chapter includes electrolysis or thermolysis.

SEC. 26. Section 7612 of the Business and Professions Code is amended to read:

7612. The bureau shall do all of the following:

(a) Conduct a comprehensive study of the need to regulate third-party casket retailers.

(b) Report to the department and the Joint Committee on Boards, Commissions, and Consumer Protection on or before September 1, 2004, on the matter.

SEC. 27. Section 8000 of the Business and Professions Code is amended to read:

8000. There is in the Department of Consumer Affairs a Court Reporters Board of California, which consists of five members, three of whom shall be public members and two of whom shall be holders of certificates issued under this chapter who have been actively engaged as shorthand reporters within this state for at least five years immediately preceding their appointment.

This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473), except that the review shall be limited to only those unresolved issues identified by the Joint Committee on Boards, Commissions, and Consumer Protection.

SEC. 28. Section 9610 of the Business and Professions Code is amended to read:

9610. The bureau shall do both of the following:

(a) Conduct a comprehensive study of the need for the regulation of proprietary employees of religious corporations, churches, religious societies, and religious denominations.

(b) Report to the department and the Joint Committee on Boards, Commissions, and Consumer Protection on or before September 1, 2004, on the matter specified in subdivision (a).

SEC. 29. Section 94779.1 of the Education Code is amended to read:

94779.1. (a) The bureau shall work together with the staff of the Joint Committee on Boards, Commissions, and Consumer Protection, 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 Committee on Boards, Commissions, and Consumer Protection 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. 30. Section 94779.3 of the Education Code is amended 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 Committee on Boards, Commissions, and Consumer Protection 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. 31. Section 94990 of the Education Code is amended to read:

94990. The bureau is subject to the sunset review process conducted by the Joint Committee on Boards, Commissions, and Consumer Protection 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. 32. Section 94995 of the Education Code is amended to read:

94995. (a) Notwithstanding Section 7550.5 of the Government Code, on or before January 31 of each calendar year, the bureau shall submit a written report to the Legislature and to the California Postsecondary Education Commission, summarizing its activities during the previous fiscal year.

(b) Annual reports prepared pursuant to this section shall include, but shall not necessarily be limited to, all of the following:

(1) Timely information relating to the enforcement activities of the bureau pursuant to this chapter.

(2) Statistics providing a composite picture of the private postsecondary educational community, including data on how many schools, as classified by subject matter, and how many students there are within the scope of the activities of the bureau.

(c) Any reports submitted by the bureau to the Joint Committee on Boards, Commissions, and Consumer Protection pursuant to Division 1.2 (commencing with Section 473) of the Business and Professions Code during any calendar year shall satisfy the reporting requirements of this section for that year.

SEC. 33. 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 Committee on Boards, Commissions, and Consumer Protection to evaluate a plan prepared pursuant to Section 9148.4 or 9148.6.

(b) Evaluations prepared by the Joint Committee on Boards, Commissions, and Consumer Protection 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. 34. Section 9148.52 of the Government Code is amended to read:

9148.52. (a) The Joint Committee on Boards, Commissions, and Consumer Protection 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. 35. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enable the licensing of additional dentists to assist in serving underserved communities as quickly as possible, and to rename the Joint Legislative Sunset Review Committee, it is necessary that this act take effect immediately.

CHAPTER 34

An act to amend Sections 62.5, 139.2, 139.48, 2699, 3201.5, 3201.7, 3201.9, 3202.5, 3207, 3823, 4060, 4061, 4062, 4062.1, 4062.5, 4600, 4603.2, 4604.5, 4650, 4656, 4658, 4660, 4706.5, 4903.05, 5402, 5703, and 6401.7 of, to amend, repeal, and add Section 5814 of, to add Sections 138.65, 4062.3, 4062.8, 4658.1, 4664, and 5814.6 to, to add Article 2.3 (commencing with Section 4616) to Chapter 2 of Part 2 of Division 4 of, to repeal Sections 4062.01, 4062.9, 4750, and 4750.5 of, to repeal and add Sections 4062.2 and 4663 of, and to repeal, add, and repeal Section 139.5 of, the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 19, 2004. Filed with
Secretary of State April 19, 2004.]

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

SECTION 1. 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 the Return-to-Work Program set forth in Section 139.48, and may not be used or borrowed for any other purpose.

(b) The fund shall consist of surcharges made pursuant to subdivision (e).

(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 surcharge 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 4751) 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 surcharge 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 surcharges 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 surcharges 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 surcharges. The regulations shall require the surcharges 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 surcharges to be paid by insured employers to be expressed as a percentage of premium. In no event shall the surcharges paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission. In no event shall the total amount of the surcharges paid by insured and self-insured employers exceed the amounts reasonably necessary to carry out the purposes of this section.

(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. 1.5. Section 138.65 is added to the Labor Code, to read:

138.65. (a) The administrative director, after consultation with the Insurance Commissioner, shall contract with a qualified organization to study the effects of the 2003 and 2004 legislative reforms on workers' compensation insurance rates. The study shall do, but not be limited to, all of the following:

(1) Identify and quantify the savings generated by the reforms.

(2) Review workers' compensation insurance rates to determine the extent to which the reform savings were reflected in rates. When reviewing the rates, consideration shall be given to an insurer's premium revenue, claim costs, and surplus levels.

(3) Assess the effect of the reform savings on replenishing surpluses for workers' compensation insurance coverage.

(4) Review the effects of the reforms on the workers' compensation insurance rates, marketplace, and competition.

(5) Review the adequacy and accuracy of the pure premium rate as recommended by the Workers' Compensation Insurance Bureau and the pure premium rate adopted by the Insurance Commissioner.

(b) Insurers shall submit to the contracting organization premium revenue, claims costs, and surplus levels in different timing aggregates as established by the contracting organization, but at least quarterly and annually. The contracting organization may also request additional materials when appropriate. The contracting organization and the commission shall maintain strict confidentiality of the data. An insurer that fails to comply with the reporting requirements of this subdivision is subject to Section 11754 of the Insurance Code.

(c) The administrative director shall submit to the Governor, the Insurance Commissioner, and the President pro Tempore of the Senate, the Speaker of the Assembly, and the chairs of the appropriate policy committees of the Legislature, a progress report on the study on January 1, 2005, and July 1, 2005, and the final study on or before January 1, 2006. The Governor and the Insurance Commissioner shall review the results of the study and make recommendations as to the appropriateness of regulating insurance rates. If, after reviewing the study, the Governor and the Insurance Commissioner determine that the rates do not appropriately reflect the savings and the timing of the savings associated with the 2003 and 2004 reforms, the Governor and the Insurance Commissioner may submit proposals to the Legislature. The proposals shall take into consideration how rates should be regulated, and by whom. In no event shall the proposals unfairly penalize insurers that have properly reflected the 2003 and 2004 reforms in their rates, or can

verify that they have not received any cost savings as a result of the reforms.

(d) The cost of the study shall be borne by the insurers up to one million dollars ($1,000,000). The cost of the study shall be allocated to an insurer based on the insurer's proportionate share of the market.

SEC. 2. Section 139.2 of the Labor Code is amended to read:

139.2. (a) The administrative director shall appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical-legal issues. The appointments shall be for two-year terms.

(b) The administrative director shall appoint or reappoint as a qualified medical evaluator a physician, as defined in Section 3209.3, who is licensed to practice in this state and who demonstrates that he or she meets the requirements in paragraphs (1), (2), (6), and (7), and, if the physician is a medical doctor, doctor of osteopathy, doctor of chiropractic, or a psychologist, that he or she also meets the applicable requirements in paragraph (3), (4), or (5).

(1) Prior to his or her appointment as a qualified medical evaluator, passes an examination written and administered by the administrative director for the purpose of demonstrating competence in evaluating medical-legal issues in the workers' compensation system. Physicians shall not be required to pass an additional examination as a condition of reappointment. A physician seeking appointment as a qualified medical evaluator on or after January 1, 2001, shall also complete prior to appointment, a course on disability evaluation report writing approved by the administrative director. The administrative director shall specify the curriculum to be covered by disability evaluation report writing courses, which shall include, but is not limited to, 12 or more hours of instruction.

(2) Devotes at least one-third of total practice time to providing direct medical treatment, or has served as an agreed medical evaluator on eight or more occasions in the 12 months prior to applying to be appointed as a qualified medical evaluator.

(3) Is a medical doctor or doctor of osteopathy and meets one of the following requirements:

(A) Is board certified in a specialty by a board recognized by the administrative director and either the Medical Board of California or the Osteopathic Medical Board of California.

(B) Has successfully completed a residency training program accredited by the American College of Graduate Medical Education or the osteopathic equivalent.

(C) Was an active qualified medical evaluator on June 30, 2000.

(D) Has qualifications that the administrative director and either the Medical Board of California or the Osteopathic Medical Board of

California, as appropriate, both deem to be equivalent to board certification in a specialty.

(4) Is a doctor of chiropractic and meets either of the following requirements:

(A) Has completed a chiropractic postgraduate specialty program of a minimum of 300 hours taught by a school or college recognized by the administrative director, the Board of Chiropractic Examiners and the Council on Chiropractic Education.

(B) Has been certified in California workers' compensation evaluation by a provider recognized by the administrative director. The certification program shall include instruction on disability evaluation report writing that meets the standards set forth in paragraph (1).

(5) Is a psychologist and meets one of the following requirements:

(A) Is board certified in clinical psychology by a board recognized by the administrative director.

(B) Holds a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, from a university or professional school recognized by the administrative director and has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(C) Has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders, and has served as an agreed medical evaluator on eight or more occasions prior to January 1, 1990.

(6) Does not have a conflict of interest as determined under the regulations adopted by the administrative director pursuant to subdivision (o).

(7) Meets any additional medical or professional standards adopted pursuant to paragraph (6) of subdivision (j).

(c) The administrative director shall adopt standards for appointment of physicians who are retired or who hold teaching positions who are exceptionally well qualified to serve as a qualified medical evaluator even though they do not otherwise qualify under paragraph (2) of subdivision (b). In no event shall a physician whose full-time practice is limited to the forensic evaluation of disability be appointed as a qualified medical evaluator under this subdivision.

(d) The qualified medical evaluator, upon request, shall be reappointed if he or she meets the qualifications of subdivision (b) and meets all of the following criteria:

(1) Is in compliance with all applicable regulations and evaluation guidelines adopted by the administrative director.

(2) Has not had more than five of his or her evaluations that were considered by a workers' compensation administrative law judge at a

contested hearing rejected by the workers' compensation administrative law judge or the appeals board pursuant to this section during the most recent two-year period during which the physician served as a qualified medical evaluator. If the workers' compensation administrative law judge or the appeals board rejects the qualified medical evaluator's report on the basis that it fails to meet the minimum standards for those reports established by the administrative director or the appeals board, the workers' compensation administrative law judge or the appeals board, as the case may be, shall make a specific finding to that effect, and shall give notice to the medical evaluator and to the administrative director. Any rejection shall not be counted as one of the five qualifying rejections until the specific finding has become final and time for appeal has expired.

(3) Has completed within the previous 24 months at least 12 hours of continuing education in impairment evaluation or workers' compensation-related medical dispute evaluation approved by the administrative director.

(4) Has not been terminated, suspended, placed on probation, or otherwise disciplined by the administrative director during his or her most recent term as a qualified medical evaluator.

If the evaluator does not meet any one of these criteria, the administrative director may in his or her discretion reappoint or deny reappointment according to regulations adopted by the administrative director. In no event may a physician who does not currently meet the requirements for initial appointment or who has been terminated under subdivision (e) because his or her license has been revoked or terminated by the licensing authority be reappointed.

(e) The administrative director may, in his or her discretion, suspend or terminate a qualified medical evaluator during his or her term of appointment without a hearing as provided under subdivision (k) or (*l*) whenever either of the following conditions occurs:

(1) The evaluator's license to practice in California has been suspended by the relevant licensing authority so as to preclude practice, or has been revoked or terminated by the licensing authority.

(2) The evaluator has failed to timely pay the fee required by the administrative director pursuant to subdivision (n).

(f) The administrative director shall furnish a physician, upon request, with a written statement of its reasons for termination of, or for denying appointment or reappointment as, a qualified medical evaluator. Upon receipt of a specific response to the statement of reasons, the administrative director shall review his or her decision not to appoint or reappoint the physician or to terminate the physician and shall notify the physician of its final decision within 60 days after receipt of the physician's response.

(g) The administrative director shall establish agreements with qualified medical evaluators to assure the expeditious evaluation of cases assigned to them for comprehensive medical evaluations.

(h) (1) When requested by an employee or employer pursuant to Section 4062.1, the medical director appointed pursuant to Section 122 shall assign three-member panels of qualified medical evaluators within five working days after receiving a request for a panel. If a panel is not assigned within 15 working days, the employee shall have the right to obtain a medical evaluation from any qualified medical evaluator of his or her choice. The medical director shall use a random selection method for assigning panels of qualified medical evaluators. The medical director shall select evaluators who are specialists of the type requested by the employee. The medical director shall advise the employee that he or she should consult with his or her treating physician prior to deciding which type of specialist to request.

(2) The administrative director shall promulgate a form that shall notify the employee of the physicians selected for his or her panel after a request has been made pursuant to Section 4062.1 or 4062.2. The form shall include, for each physician on the panel, the physician's name, address, telephone number, specialty, number of years in practice, and a brief description of his or her education and training, and shall advise the employee that he or she is entitled to receive transportation expenses and temporary disability for each day necessary for the examination. The form shall also state in a clear and conspicuous location and type: ''You have the right to consult with an information and assistance officer at no cost to you prior to selecting the doctor to prepare your evaluation, or you may consult with an attorney. If your claim eventually goes to court, the workers' compensation administrative law judge will consider the evaluation prepared by the doctor you select to decide your claim.''

(3) When compiling the list of evaluators from which to select randomly, the medical director shall include all qualified medical evaluators who meet all of the following criteria:

(A) He or she does not have a conflict of interest in the case, as defined by regulations adopted pursuant to subdivision (o).

(B) He or she is certified by the administrative director to evaluate in an appropriate specialty and at locations within the general geographic area of the employee's residence.

(C) He or she has not been suspended or terminated as a qualified medical evaluator for failure to pay the fee required by the administrative director pursuant to subdivision (n) or for any other reason.

(4) When the medical director determines that an employee has requested an evaluation by a type of specialist that is appropriate for the employee's injury, but there are not enough qualified medical evaluators of that type within the general geographic area of the employee's

residence to establish a three-member panel, the medical director shall include sufficient qualified medical evaluators from other geographic areas and the employer shall pay all necessary travel costs incurred in the event the employee selects an evaluator from another geographic area.

(i) The medical director appointed pursuant to Section 122 shall continuously review the quality of comprehensive medical evaluations and reports prepared by agreed and qualified medical evaluators and the timeliness with which evaluation reports are prepared and submitted. The review shall include, but not be limited to, a review of a random sample of reports submitted to the division, and a review of all reports alleged to be inaccurate or incomplete by a party to a case for which the evaluation was prepared. The medical director shall submit to the administrative director an annual report summarizing the results of the continuous review of medical evaluations and reports prepared by agreed and qualified medical evaluators and make recommendations for the improvement of the system of medical evaluations and determinations.

(j) After public hearing pursuant to Section 5307.3, the administrative director shall adopt regulations concerning the following issues:

(1) (A) Standards governing the timeframes within which medical evaluations shall be prepared and submitted by agreed and qualified medical evaluators. Except as provided in this subdivision, the timeframe for initial medical evaluations to be prepared and submitted shall be no more than 30 days after the evaluator has seen the employee or otherwise commenced the medical evaluation procedure. The administrative director shall develop regulations governing the provision of extensions of the 30-day period in both of the following cases:

(i) When the evaluator has not received test results or consulting physician's evaluations in time to meet the 30-day deadline.

(ii) To extend the 30-day period by not more than 15 days when the failure to meet the 30-day deadline was for good cause.

(B) For purposes of subparagraph (A), ''good cause'' means any of the following:

(i) Medical emergencies of the evaluator or evaluator's family.

(ii) Death in the evaluator's family.

(iii) Natural disasters or other community catastrophes that interrupt the operation of the evaluator's business.

(C) The administrative director shall develop timeframes governing availability of qualified medical evaluators for unrepresented employees under Sections 4061 and 4062. These timeframes shall give the employee the right to the addition of a new evaluator to his or her panel, selected at random, for each evaluator not available to see the employee

within a specified period of time, but shall also permit the employee to waive this right for a specified period of time thereafter.

(2) Procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury in a manner consistent with Section 4660.

(3) Procedures governing the determination of any disputed medical treatment issues in a manner consistent with Section 5307.27.

(4) Procedures to be used in determining the compensability of psychiatric injury. The procedures shall be in accordance with Section 3208.3 and shall require that the diagnosis of a mental disorder be expressed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(5) Guidelines for the range of time normally required to perform the following:

(A) A medical-legal evaluation that has not been defined and valued pursuant to Section 5307.6. The guidelines shall establish minimum times for patient contact in the conduct of the evaluations, and shall be consistent with regulations adopted pursuant to Section 5307.6.

(B) Any treatment procedures that have not been defined and valued pursuant to Section 5307.1.

(C) Any other evaluation procedure requested by the Insurance Commissioner, or deemed appropriate by the administrative director.

(6) Any additional medical or professional standards that a medical evaluator shall meet as a condition of appointment, reappointment, or maintenance in the status of a medical evaluator.

(k) Except as provided in this subdivision, the administrative director may, in his or her discretion, suspend or terminate the privilege of a physician to serve as a qualified medical evaluator if the administrative director, after hearing pursuant to subdivision (*l*), determines, based on substantial evidence, that a qualified medical evaluator:

(1) Has violated any material statutory or administrative duty.

(2) Has failed to follow the medical procedures or qualifications established pursuant to paragraph (2), (3), (4), or (5) of subdivision (j).

(3) Has failed to comply with the timeframe standards established pursuant to subdivision (j).

(4) Has failed to meet the requirements of subdivision (b) or (c).

(5) Has prepared medical-legal evaluations that fail to meet the minimum standards for those reports established by the administrative director or the appeals board.

(6) Has made material misrepresentations or false statements in an application for appointment or reappointment as a qualified medical evaluator.

No hearing shall be required prior to the suspension or termination of a physician's privilege to serve as a qualified medical evaluator when the physician has done either of the following:

(A) Failed to timely pay the fee required pursuant to subdivision (n).

(B) Had his or her license to practice in California suspended by the relevant licensing authority so as to preclude practice, or had the license revoked or terminated by the licensing authority.

(*l*) The administrative director shall cite the qualified medical evaluator for a violation listed in subdivision (k) and shall set a hearing on the alleged violation within 30 days of service of the citation on the qualified medical evaluator. In addition to the authority to terminate or suspend the qualified medical evaluator upon finding a violation listed in subdivision (k), the administrative director may, in his or her discretion, place a qualified medical evaluator on probation subject to appropriate conditions, including ordering continuing education or training. The administrative director shall report to the appropriate licensing board the name of any qualified medical evaluator who is disciplined pursuant to this subdivision.

(m) The administrative director shall terminate from the list of medical evaluators any physician where licensure has been terminated by the relevant licensing board, or who has been convicted of a misdemeanor or felony related to the conduct of his or her medical practice, or of a crime of moral turpitude. The administrative director shall suspend or terminate as a medical evaluator any physician who has been suspended or placed on probation by the relevant licensing board. If a physician is suspended or terminated as a qualified medical evaluator under this subdivision, a report prepared by the physician that is not complete, signed, and furnished to one or more of the parties prior to the date of conviction or action of the licensing board, whichever is earlier, shall not be admissible in any proceeding before the appeals board nor shall there be any liability for payment for the report and any expense incurred by the physician in connection with the report.

(n) Each qualified medical evaluator shall pay a fee, as determined by the administrative director, for appointment or reappointment. These fees shall be based on a sliding scale as established by the administrative director. All revenues from fees paid under this subdivision shall be deposited into the Workers' Compensation Administration Revolving Fund and are available for expenditure upon appropriation by the Legislature, and shall not be used by any other department or agency or for any purpose other than administration of the programs the Division

of Workers' Compensation related to the provision of medical treatment to injured employees.

(o) An evaluator may not request or accept any compensation or other thing of value from any source that does or could create a conflict with his or her duties as an evaluator under this code. The administrative director, after consultation with the Commission on Health and Safety and Workers' Compensation, shall adopt regulations to implement this subdivision.

SEC. 3. Section 139.48 of the Labor Code is amended to read:

139.48. (a) (1) The administrative director shall establish the Return-to-Work Program in order to promote the early and sustained return to work of the employee following a work-related injury or illness.

(2) This section shall be implemented to the extent funds are available.

(b) Upon submission by eligible employers of documentation in accordance with regulations adopted pursuant to subdivision (h), the administrative director shall pay the workplace modification expense reimbursement allowed under this section.

(c) The administrative director shall reimburse an eligible employer for expenses incurred to make workplace modifications to accommodate the employee's return to modified or alternative work, as follows:

(1) The maximum reimbursement to an eligible employer for expenses to accommodate each temporarily disabled injured worker is one thousand two hundred fifty dollars ($1,250).

(2) The maximum reimbursement to an eligible employer for expenses to accommodate each permanently disabled worker who is a qualified injured worker is two thousand five hundred dollars ($2,500). If the employer received reimbursement under paragraph (1), the amount of the reimbursement under paragraph (1) and this paragraph shall not exceed two thousand five hundred dollars ($2,500).

(3) The modification expenses shall be incurred in order to allow a temporarily disabled worker to perform modified or alternative work within physician-imposed temporary work restrictions, or to allow a permanently disabled worker who is an injured worker to return to sustained modified or alternative employment with the employer within physician-imposed permanent work restrictions.

(4) Allowable expenses may include physical modifications to the worksite, equipment, devices, furniture, tools, or other necessary costs for accommodation of the employee's restrictions.

(d) This section shall not create a preference in employment for injured employees over noninjured employees. It shall be unlawful for an employer to discriminatorily terminate, lay off, demote, or otherwise displace an employee in order to return an industrially injured employee

to employment for the purpose of obtaining the reimbursement set forth in subdivision (c).

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

(1) ''Eligible employer'' means any employer, except the state or an employer eligible to secure the payment of compensation pursuant to subdivision (c) of Section 3700, who employs 50 or fewer full-time employees on the date of injury.

(2) ''Employee'' means a worker who has suffered a work-related injury or illness on or after July 1, 2004.

(f) The administrative director shall adopt regulations to carry out this section. Regulations allocating budget funds that are insufficient to implement the workplace modification expense reimbursement provided for in this section shall include a prioritization schema.

(g) The Workers' Compensation Return-to-Work Fund is hereby created as a special fund in the State Treasury. The fund shall consist of all penalties collected pursuant to Section 5814.6 and transfers made by the administrative director from the Workers' Compensation Administration Revolving Fund established pursuant to Section 62.5. The fund shall be administered by the administrative director. Moneys in the fund may be expended by the administrative director, upon appropriation by the Legislature, only for purposes of implementing this section.

(h) This section shall be operative on July 1, 2004.

(i) 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.

SEC. 4. Section 139.5 of the Labor Code is repealed.

SEC. 5. Section 139.5 is added to the Labor Code, to read:

139.5. (a) The administrative director shall establish a vocational rehabilitation unit, which shall include appropriate professional staff, and which shall have all of the following duties:

(1) To foster, review, and approve vocational rehabilitation plans developed by a qualified rehabilitation representative of the employer, insurer, state agency, or employee. Plans agreed to by the employer and employee do not require approval by the vocational rehabilitation unit unless the employee is unrepresented.

(2) To develop rules and regulations, to be adopted by the administrative director, providing for a procedure in which an employee may waive the services of a qualified rehabilitation representative where the employee has been enrolled and made substantial progress toward completion of a degree or certificate from a community college, California State University, or the University of California and desires a plan to complete the degree or certificate. These rules and regulations shall provide that this waiver, as well as any plan developed without the

assistance of a qualified rehabilitation representative, must be approved by the rehabilitation unit.

(3) To develop rules and regulations, to be adopted by the administrative director, which would expedite and facilitate the identification, notification, and referral of industrially injured employees to vocational rehabilitation services.

(4) To coordinate and enforce the implementation of vocational rehabilitation plans.

(5) To develop a fee schedule, to be adopted by the administrative director, governing reasonable fees for vocational rehabilitation services provided on and after January 1, 1991. The initial fee schedule adopted under this paragraph shall be designed to reduce the cost of vocational rehabilitation services by 10 percent from the level of fees paid during 1989. On or before July 1, 1994, the administrative director shall establish the maximum aggregate permissible fees that may be charged for counseling. Those fees shall not exceed four thousand five hundred dollars ($4,500) and shall be included within the sixteen thousand dollar ($16,000) cap. The fee schedule shall permit up to (A) three thousand dollars ($3,000) for vocational evaluation, evaluation of vocational feasibility, initial interview, vocational testing, counseling and research for plan development, and preparation of the Division of Workers' Compensation Form 102, and (B) three thousand five hundred dollars ($3,500) for plan monitoring, job seeking skills, and job placement research and counseling. However, in no event shall the aggregate of (A) and (B) exceed four thousand five hundred dollars ($4,500).

(6) To develop standards, to be adopted by the administrative director, for governing the timeliness and the quality of vocational rehabilitation services.

(b) The salaries of the personnel of the vocational rehabilitation unit shall be fixed by the Department of Personnel Administration.

(c) When an employee is determined to be medically eligible and chooses to participate in a vocational rehabilitation program, he or she shall continue to receive temporary disability indemnity payments only until his or her medical condition becomes permanent and stationary and, thereafter, may receive a maintenance allowance. Rehabilitation maintenance allowance payments shall begin after the employee's medical condition becomes permanent and stationary, upon a request for vocational rehabilitation services. Thereafter, the maintenance allowance shall be paid for a period not to exceed 52 weeks in the aggregate, except where the overall cap on vocational rehabilitation services can be exceeded under this section or former Section 4642 or subdivision (d) or (e) of former Section 4644.

The employee also shall receive additional living expenses necessitated by the vocational rehabilitation services, together with all

reasonable and necessary vocational training, at the expense of the employer, but in no event shall the expenses, counseling fees, training, maintenance allowance, and costs associated with, or arising out of, vocational rehabilitation services incurred after the employee's request for vocational rehabilitation services, except temporary disability payments, exceed sixteen thousand dollars ($16,000). The administrative director shall adopt regulations to ensure that the continued receipt of vocational rehabilitation maintenance allowance benefits is dependent upon the injured worker's regular and consistent attendance at, and participation in, his or her vocational rehabilitation program.

(d) The amount of the maintenance allowance due under subdivision (c) shall be two-thirds of the employee's average weekly earnings at the date of injury payable as follows:

(1) The amount the employee would have received as continuing temporary disability indemnity, but not more than two hundred forty-six dollars ($246) a week for injuries occurring on or after January 1, 1990.

(2) At the employee's option, an additional amount from permanent disability indemnity due or payable, sufficient to provide the employee with a maintenance allowance equal to two-thirds of the employee's average weekly earnings at the date of injury subject to the limits specified in subdivision (a) of Section 4453 and the requirements of Section 4661.5. In no event shall temporary disability indemnity and maintenance allowance be payable concurrently.

If the employer disputes the treating physician's determination of medical eligibility, the employee shall continue to receive that portion of the maintenance allowance payable under paragraph (1) pending final determination of the dispute. If the employee disputes the treating physician's determination of medical eligibility and prevails, the employee shall be entitled to that portion of the maintenance allowance payable under paragraph (1) retroactive to the date of the employee's request for vocational rehabilitation services. These payments shall not be counted against the maximum expenditures for vocational rehabilitation services provided by this section.

(e) No provision of this section nor of any rule, regulation, or vocational rehabilitation plan developed or adopted under this section nor any benefit provided pursuant to this section shall apply to an injured employee whose injury occurred prior to January 1, 1975. Nothing in this section shall affect any plan, benefit, or program authorized by this section as added by Chapter 1513 of the Statutes of 1965 or as amended by Chapter 83 of the Statutes of 1972.

(f) The time within which an employee may request vocational rehabilitation services is set forth in former Section 5405.5 and Sections 5410 and 5803.

(g) An offer of a job within state service to a state employee in State Bargaining Unit 1, 4, 15, 18, or 20 at the same or similar salary and the same or similar geographic location is a prima facie offer of vocational rehabilitation under this statute.

(h) It shall be unlawful for a qualified rehabilitation representative or rehabilitation counselor to refer any employee to any work evaluation facility or to any education or training program if the qualified rehabilitation representative or rehabilitation counselor, or a spouse, employer, co-employee, or any party with whom he or she has entered into contract, express or implied, has any proprietary interest in or contractual relationship with the work evaluation facility or education or training program. It shall also be unlawful for any insurer to refer any injured worker to any rehabilitation provider or facility if the insurer has a proprietary interest in the rehabilitation provider or facility or for any insurer to charge against any claim for the expenses of employees of the insurer to provide vocational rehabilitation services unless those expenses are disclosed to the insured and agreed to in advance.

(i) Any charges by an insurer for the activities of an employee who supervises outside vocational rehabilitation services shall not exceed the vocational rehabilitation fee schedule, and shall not be counted against the overall cap for vocational rehabilitation or the limit on counselor's fees provided for in this section. These charges shall be attributed as expenses by the insurer and not losses for purposes of insurance rating pursuant to Article 2 (commencing with Section 11730) of Chapter 3 of Part 3 of Division 2 of the Insurance Code.

(j) Any costs of an employer of supervising vocational rehabilitation services shall not be counted against the overall cap for vocational rehabilitation or the limit on counselor's fees provided for in this section.

(k) This section shall apply only to injuries occurring before January 1, 2004.

(*l*) 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.

SEC. 5.5. Section 2699 of the Labor Code is amended to read:

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.

(k) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

SEC. 6. Section 3201.5 of the Labor Code is amended to read:

3201.5. (a) Except as provided in subdivisions (b) and (c), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any provision in a collective bargaining agreement between a private employer or groups of employers engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy-duty mechanics, surveying, and construction inspection and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:

(1) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the appeals board. The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation administrative law judge. Any provision for arbitration established pursuant to this section shall not be subject to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

(2) The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.

(3) The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators under this division.

(4) Joint labor management safety committees.

(5) A light-duty, modified job or return-to-work program.

(6) A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.

(b) (1) Nothing in this section shall allow a collective bargaining agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division. The portion of any agreement that violates this paragraph shall be declared null and void.

(2) The parties may negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers that are eligible for group health benefits and nonoccupational disability benefits through their employer.

(c) Subdivision (a) shall apply only to the following:

(1) An employer developing or projecting an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars ($250,000) or more, or any employer that paid an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars ($250,000) in at least one of the previous three years.

(2) Groups of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, that develops or projects annual workers' compensation insurance premiums of two million dollars ($2,000,000) or more.

(3) Employers or groups of employers that are self-insured in compliance with Section 3700 that would have projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers.

(4) Employers covered by an owner or general contractor provided wrap-up insurance policy applicable to a single construction site that develops workers' compensation insurance premiums of two million

dollars ($2,000,000) or more with respect to those employees covered by that wrap-up insurance policy.

(d) Employers and labor representatives who meet the eligibility requirements of this section shall be issued a letter by the administrative director advising each employer and labor representative that, based upon the review of all documents and materials submitted as required by the administrative director, each has met the eligibility requirements of this section.

(e) The premium rate for a policy of insurance issued pursuant to this section shall not be subject to the requirements of Section 11732 or 11732.5 of the Insurance Code.

(f) No employer may establish or continue a program established under this section until it has provided the administrative director with all of the following:

(1) Upon its original application and whenever it is renegotiated thereafter, a copy of the collective bargaining agreement and the approximate number of employees who will be covered thereby.

(2) Upon its original application and annually thereafter, a valid and active license where that license is required by law as a condition of doing business in the state within the industries set forth in subdivision (a) of Section 3201.5.

(3) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the collective bargaining agreement.

(4) The name, address, and telephone number of the contact person of the employer.

(5) Any other information that the administrative director deems necessary to further the purposes of this section.

(g) No collective bargaining representative may establish or continue to participate in a program established under this section unless all of the following requirements are met:

(1) Upon its original application and annually thereafter, it has provided to the administrative director a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.

(2) It has provided to the administrative director the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.

(h) Commencing July 1, 1995, and annually thereafter, the Division of Workers' Compensation shall report to the Director of the Department of Industrial Relations the number of collective bargaining agreements received and the number of employees covered by these agreements.

(i) By June 30, 1996, and annually thereafter, the Administrative Director of the Division of Workers' Compensation shall prepare and notify Members of the Legislature that a report authorized by this section is available upon request. The report based upon aggregate data shall include the following:

(1) Person hours and payroll covered by agreements filed.

(2) The number of claims filed.

(3) The average cost per claim shall be reported by cost components whenever practicable.

(4) The number of litigated claims, including the number of claims submitted to mediation, the appeals board, or the court of appeal.

(5) The number of contested claims resolved prior to arbitration.

(6) The projected incurred costs and actual costs of claims.

(7) Safety history.

(8) The number of workers participating in vocational rehabilitation.

(9) The number of workers participating in light-duty programs.

The division shall have the authority to require those employers and groups of employers listed in subdivision (c) to provide the data listed above.

(j) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation shall create derivative works pursuant to subdivisions (h) and (i) based on the collective bargaining agreements and data. Those derivative works shall not be confidential, but shall be public. On a monthly basis the administrative director shall make available an updated list of employers and unions entering into collective bargaining agreements containing provisions authorized by this section.

SEC. 7. Section 3201.7 of the Labor Code is amended to read:

3201.7. (a) Except as provided in subdivision (b), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any labor-management agreement that meets all of the following requirements:

(1) The labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.

(2) The labor-management agreement is restricted to the establishment of the terms and conditions necessary to implement this section.

(3) The labor-management agreement has been negotiated in accordance with the authorization of the administrative director pursuant to subdivision (d), between an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:

(A) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the appeals board. The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation administrative law judge. Any provision for arbitration established pursuant to this section shall not be subject to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

(B) The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.

(C) The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators under this division.

(D) Joint labor management safety committees.

(E) A light-duty, modified job, or return-to-work program.

(F) A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.

(b) (1) Nothing in this section shall allow a labor-management agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division; nor shall any agreement authorized by this section deny to any employee the right to representation by counsel at all stages during the alternative dispute resolution process. The portion of any agreement that violates this paragraph shall be declared null and void.

(2) The parties may negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers that are eligible for group health benefits and nonoccupational disability benefits through their employer.

(c) Subdivision (a) shall apply only to the following:

(1) An employer developing or projecting an annual workers' compensation insurance premium, in California, of fifty thousand dollars ($50,000) or more, and employing at least 50 employees, or any employer that paid an annual workers' compensation insurance premium, in California, of fifty thousand dollars ($50,000), and employing at least 50 employees in at least one of the previous three years.

(2) Groups of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, that develops or projects annual workers' compensation insurance premiums of five hundred thousand dollars ($500,000) or more.

(3) Employers or groups of employers, including cities and counties, that are self-insured in compliance with Section 3700 that would have projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers.

(d) Any recognized or certified exclusive bargaining representative in an industry not covered by Section 3201.5, may file a petition with the administrative director seeking permission to negotiate with an employer or group of employers to enter into a labor-management agreement pursuant to this section. The petition shall specify the bargaining unit or units to be included, the names of the employers or groups of employers, and shall be accompanied by proof of the labor union's status as the exclusive bargaining representative. The current collective bargaining agreement or agreements shall be attached to the petition. The petition shall be in the form designated by the administrative director. Upon receipt of the petition, the administrative director shall promptly verify the petitioner's status as the exclusive bargaining representative. If the petition satisfies the requirements set forth in this subdivision, the administrative director shall issue a letter advising each employer and labor representative of their eligibility to enter into negotiations, for a period not to exceed one year, for the purpose of reaching agreement on a labor-management agreement pursuant to this section. The parties may jointly request, and shall be granted, by the administrative director, an additional one-year period to negotiate an agreement.

(e) No employer may establish or continue a program established under this section until it has provided the administrative director with all of the following:

(1) Upon its original application and whenever it is renegotiated thereafter, a copy of the labor-management agreement and the approximate number of employees who will be covered thereby.

(2) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the labor-management agreement.

(3) The name, address, and telephone number of the contact person of the employer.

(4) Any other information that the administrative director deems necessary to further the purposes of this section.

(f) No collective bargaining representative may establish or continue to participate in a program established under this section unless all of the following requirements are met:

(1) Upon its original application and annually thereafter, it has provided to the administrative director a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, where such filing is required by law, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.

(2) It has provided to the administrative director the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.

(g) Commencing July 1, 2005, and annually thereafter, the Division of Workers' Compensation shall report to the Director of Industrial Relations the number of labor-management agreements received and the number of employees covered by these agreements.

(h) By June 30, 2006, and annually thereafter, the administrative director shall prepare and notify Members of the Legislature that a report authorized by this section is available upon request. The report based upon aggregate data shall include the following:

(1) Person hours and payroll covered by agreements filed.

(2) The number of claims filed.

(3) The average cost per claim shall be reported by cost components whenever practicable.

(4) The number of litigated claims, including the number of claims submitted to mediation, the appeals board, or the court of appeal.

(5) The number of contested claims resolved prior to arbitration.

(6) The projected incurred costs and actual costs of claims.

(7) Safety history.

(8) The number of workers participating in vocational rehabilitation.

(9) The number of workers participating in light-duty programs.

(10) Overall worker satisfaction.

The division shall have the authority to require employers and groups of employers participating in labor-management agreements pursuant to this section to provide the data listed above.

(i) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation shall create derivative works pursuant to subdivisions (f) and (g) based on the labor-management agreements and data. Those derivative works shall not be confidential, but shall be public. On a monthly basis, the administrative director shall make available an updated list of employers and unions entering into labor-management agreements authorized by this section.

SEC. 8. Section 3201.9 of the Labor Code is amended to read:

3201.9. (a) On or before June 30, 2004, and biannually thereafter, the report required in subdivision (i) of Section 3201.5 and subdivision (h) of Section 3201.7 shall include updated loss experience for all employers and groups of employers participating in a program established under those sections. The report shall include updated data on each item set forth in subdivision (i) of Section 3201.5 and subdivision (h) of Section 3201.7 for the previous year for injuries in 2003 and beyond. Updates for each program shall be done for the original program year and for subsequent years. The insurers, the Department of Insurance, and the rating organization designated by the Insurance Commissioner pursuant to Article 3 (commencing with Section 11750) of Chapter 3 of Part 3 of Division 2 of the Insurance Code, shall provide the administrative director with any information that the administrative director determines is reasonably necessary to conduct the study.

(b) Commencing on and after June 30, 2004, the Insurance Commissioner, or the commissioner's designee, shall prepare for inclusion in the report required in subdivision (i) of Section 3201.5 and subdivision (h) of Section 3201.7 a review of both of the following:

(1) The adequacy of rates charged for these programs, including the impact of scheduled credits and debits.

(2) The comparative results for these programs with other programs not subject to Section 3201.5 or Section 3201.7.

(c) Upon completion of the report, the administrative director shall report the findings to the Legislature, the Department of Insurance, the designated rating organization, and the programs and insurers participating in the study.

(d) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state.

SEC. 9. Section 3202.5 of the Labor Code is amended to read:

3202.5. All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law. ''Preponderance of the evidence'' means that evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.

SEC. 10. Section 3207 of the Labor Code is amended to read:

3207. ''Compensation'' means compensation under this division and includes every benefit or payment conferred by this division upon an injured employee, or in the event of his or her death, upon his or her dependents, without regard to negligence.

SEC. 11. Section 3823 of the Labor Code is amended to read:

3823. (a) The administrative director shall, in coordination with the Bureau of Fraudulent Claims of the Department of Insurance, the Medi-Cal Fraud Task Force, and the Bureau of Medi-Cal Fraud and Elder Abuse of the Department of Justice, or their successor entities, adopt protocols, to the extent that these protocols are applicable to achieve the purpose of subdivision (b), similar to those adopted by the Department of Insurance concerning medical billing and provider fraud.

(b) Any insurer, self-insured employer, third-party administrator, workers' compensation administrative law judge, audit unit, attorney, or other person that believes that a fraudulent claim has been made by any person or entity providing medical care, as described in Section 4600, shall report the apparent fraudulent claim in the manner prescribed by subdivision (a).

(c) No insurer, self-insured employer, third-party administrator, workers' compensation administrative law judge, audit unit, attorney, or other person that reports any apparent fraudulent claim under this section shall be subject to any civil liability in a cause of action of any kind when the insurer, self-insured employer, third-party administrator, workers' compensation administrative law judge, audit unit, attorney, or other person acts in good faith, without malice, and reasonably believes that the action taken was warranted by the known facts, obtained by reasonable efforts. Nothing in this section is intended to, nor does in any manner, abrogate or lessen the existing common law or statutory privileges and immunities of any insurer, self-insured employer, third-party administrator, workers' compensation administrative law judge, audit unit, attorney, or other person.

SEC. 12. Section 4060 of the Labor Code is amended to read:

4060. (a) This section shall apply to disputes over the compensability of any injury. This section shall not apply where injury to any part or parts of the body is accepted as compensable by the employer.

(b) Neither the employer nor the employee shall be liable for any comprehensive medical-legal evaluation performed by other than the treating physician, except as provided in this section. However, reports of treating physicians shall be admissible.

(c) If a medical evaluation is required to determine compensability at any time after the filing of the claim form, and the employee is represented by an attorney, a medical evaluation to determine compensability shall be obtained only by the procedure provided in Section 4062.2.

(d) If a medical evaluation is required to determine compensability at any time after the claim form is filed, and the employee is not represented by an attorney, the employer shall provide the employee with notice either that the employer requests a comprehensive medical evaluation to determine compensability or that the employer has not accepted liability and the employee may request a comprehensive medical evaluation to determine compensability. Either party may request a comprehensive medical evaluation to determine compensability. The evaluation shall be obtained only by the procedure provided in Section 4062.1.

(e) (1) Each notice required by subdivision (d) shall describe the administrative procedures available to the injured employee and advise the employee of his or her right to consult an information and assistance officer or an attorney. It shall contain the following language:

''Should you decide to be represented by an attorney, you may or may not receive a larger award, but, unless you are determined to be ineligible for an award, the attorney's fee will be deducted from any award you might receive for disability benefits. The decision to be represented by an attorney is yours to make, but it is voluntary and may not be necessary for you to receive your benefits.''

(2) The notice required by subdivision (d) shall be accompanied by the form prescribed by the administrative director for requesting the assignment of a panel of qualified medical evaluators.

SEC. 13. Section 4061 of the Labor Code is amended to read:

4061. (a) Together with the last payment of temporary disability indemnity, the employer shall, in a form prescribed by the administrative director pursuant to Section 138.4, provide the employee one of the following:

(1) Notice either that no permanent disability indemnity will be paid because the employer alleges the employee has no permanent impairment or limitations resulting from the injury or notice of the amount of permanent disability indemnity determined by the employer to be payable. The notice shall include information concerning how the employee may obtain a formal medical evaluation pursuant to subdivision (c) or (d) if he or she disagrees with the position taken by the employer. The notice shall be accompanied by the form prescribed by the

administrative director for requesting assignment of a panel of qualified medical evaluators, unless the employee is represented by an attorney. If the employer determines permanent disability indemnity is payable, the employer shall advise the employee of the amount determined payable and the basis on which the determination was made and whether there is need for continuing medical care.

(2) Notice that permanent disability indemnity may be or is payable, but that the amount cannot be determined because the employee's medical condition is not yet permanent and stationary. The notice shall advise the employee that his or her medical condition will be monitored until it is permanent and stationary, at which time the necessary evaluation will be performed to determine the existence and extent of permanent impairment and limitations for the purpose of rating permanent disability and to determine the need for continuing medical care, or at which time the employer will advise the employee of the amount of permanent disability indemnity the employer has determined to be payable. If an employee is provided notice pursuant to this paragraph and the employer later takes the position that the employee has no permanent impairment or limitations resulting from the injury, or later determines permanent disability indemnity is payable, the employer shall in either event, within 14 days of the determination to take either position, provide the employee with the notice specified in paragraph (1).

(b) Each notice required by subdivision (a) shall describe the administrative procedures available to the injured employee and advise the employee of his or her right to consult an information and assistance officer or an attorney. It shall contain the following language:

''Should you decide to be represented by an attorney, you may or may not receive a larger award, but, unless you are determined to be ineligible for an award, the attorney's fee will be deducted from any award you might receive for disability benefits. The decision to be represented by an attorney is yours to make, but it is voluntary and may not be necessary for you to receive your benefits.''

(c) If the parties do not agree to a permanent disability rating based on the treating physician's evaluation, and the employee is represented by an attorney, a medical evaluation to determine permanent disability shall be obtained as provided in Section 4062.2.

(d) If the parties do not agree to a permanent disability rating based on the treating physician's evaluation, and if the employee is not represented by an attorney, the employer shall immediately provide the employee with a form prescribed by the medical director with which to request assignment of a panel of three qualified medical evaluators. Either party may request a comprehensive medical evaluation to

determine permanent disability, and the evaluation shall be obtained only by the procedure provided in Section 4062.1.

(e) The qualified medical evaluator who has evaluated an unrepresented employee shall serve the comprehensive medical evaluation and the summary form on the employee, employer, and the administrative director. The unrepresented employee or the employer may submit the treating physician's evaluation for the calculation of a permanent disability rating. Within 20 days of receipt of the comprehensive medical evaluation, the administrative director shall calculate the permanent disability rating according to Section 4660 and serve the rating on the employee and employer.

(f) Any comprehensive medical evaluation concerning an unrepresented employee which indicates that part or all of an employee's permanent impairment or limitations may be subject to apportionment pursuant to Sections 4663 and 4664 shall first be submitted by the administrative director to a workers' compensation judge who may refer the report back to the qualified medical evaluator for correction or clarification if the judge determines the proposed apportionment is inconsistent with the law.

(g) Within 30 days of receipt of the rating, if the employee is unrepresented, the employee or employer may request that the administrative director reconsider the recommended rating or obtain additional information from the treating physician or medical evaluator to address issues not addressed or not completely addressed in the original comprehensive medical evaluation or not prepared in accord with the procedures promulgated under paragraph (2) or (3) of subdivision (j) of Section 139.2. This request shall be in writing, shall specify the reasons the rating should be reconsidered, and shall be served on the other party. If the administrative director finds the comprehensive medical evaluation is not complete or not in compliance with the required procedures, the administrative director shall return the report to the treating physician or qualified medical evaluator for appropriate action as the administrative director instructs. Upon receipt of the treating physician's or qualified medical evaluator's final comprehensive medical evaluation and summary form, the administrative director shall recalculate the permanent disability rating according to Section 4660 and serve the rating, the comprehensive medical evaluation, and the summary form on the employee and employer.

(h) (1) If a comprehensive medical evaluation from the treating physician or an agreed medical evaluator or a qualified medical evaluator selected from a three-member panel resolves any issue so as to require an employer to provide compensation, the employer shall

commence the payment of compensation or promptly commence proceedings before the appeals board to resolve the dispute.

(2) If the employee and employer agree to a stipulated findings and award as provided under Section 5702 or to compromise and release the claim under Chapter 2 (commencing with Section 5000) of Part 3, or if the employee wishes to commute the award under Chapter 3 (commencing with Section 5100) of Part 3, the appeals board shall first determine whether the agreement or commutation is in the best interests of the employee and whether the proper procedures have been followed in determining the permanent disability rating. The administrative director shall promulgate a form to notify the employee, at the time of service of any rating under this section, of the options specified in this subdivision, the potential advantages and disadvantages of each option, and the procedure for disputing the rating.

(i) No issue relating to the existence or extent of permanent impairment and limitations resulting from the injury may be the subject of a declaration of readiness to proceed unless there has first been a medical evaluation by a treating physician or an agreed or qualified medical evaluator. With the exception of an evaluation or evaluations prepared by the treating physician or physicians, no evaluation of permanent impairment and limitations resulting from the injury shall be obtained, except in accordance with Section 4062.1 or 4062.2. Evaluations obtained in violation of this prohibition shall not be admissible in any proceeding before the appeals board.

SEC. 14. Section 4062 of the Labor Code is amended to read:

4062. (a) If either the employee or employer objects to a medical determination made by the treating physician concerning any medical issues not covered by Section 4060 or 4061 and not subject to Section 4610, the objecting party shall notify the other party in writing of the objection within 20 days of receipt of the report if the employee is represented by an attorney or within 30 days of receipt of the report if the employee is not represented by an attorney. Employer objections to the treating physician's recommendation for spinal surgery shall be subject to subdivision (b), and after denial of the physician's recommendation, in accordance with Section 4610. If the employee objects to a decision made pursuant to Section 4610 to modify, delay, or deny a treatment recommendation, the employee shall notify the employer of the objection in writing within 20 days of receipt of that decision. These time limits may be extended for good cause or by mutual agreement. If the employee is represented by an attorney, a medical evaluation to determine the disputed medical issue shall be obtained as provided in Section 4062.2, and no other medical evaluation shall be obtained. If the employee is not represented by an attorney, the employer shall immediately provide the employee with a form prescribed by the

medical director with which to request assignment of a panel of three qualified medical evaluators, the evaluation shall be obtained as provided in Section 4062.1, and no other medical evaluation shall be obtained.

(b) The employer may object to a report of the treating physician recommending that spinal surgery be performed within 10 days of the receipt of the report. If the employee is represented by an attorney, the parties shall seek agreement with the other party on a California licensed board-certified or board-eligible orthopedic surgeon or neurosurgeon to prepare a second opinion report resolving the disputed surgical recommendation. If no agreement is reached within 10 days, or if the employee is not represented by an attorney, an orthopedic surgeon or neurosurgeon shall be randomly selected by the administrative director to prepare a second opinion report resolving the disputed surgical recommendation. Examinations shall be scheduled on an expedited basis. The second opinion report shall be served on the parties within 45 days of receipt of the treating physician's report. If the second opinion report recommends surgery, the employer shall authorize the surgery. If the second opinion report does not recommend surgery, the employer shall file a declaration of readiness to proceed. The employer shall not be liable for medical treatment costs for the disputed surgical procedure, whether through a lien filed with the appeals board or as a self-procured medical expense, or for periods of temporary disability resulting from the surgery, if the disputed surgical procedure is performed prior to the completion of the second opinion process required by this subdivision.

(c) The second opinion physician shall not have any material professional, familial, or financial affiliation, as determined by the administrative director, with any of the following:

(1) The employer, his or her workers' compensation insurer, third-party claims administrator, or other entity contracted to provide utilization review services pursuant to Section 4610.

(2) Any officer, director, or employee of the employer's health care provider, workers' compensation insurer, or third-party claims administrator.

(3) A physician, the physician's medical group, or the independent practice association involved in the health care service in dispute.

(4) The facility or institution at which either the proposed health care service, or the alternative service, if any, recommended by the employer's health care provider, workers' compensation insurer, or third-party claims administrator, would be provided.

(5) The development or manufacture of the principal drug, device, procedure, or other therapy proposed by the employee or his or her treating physician whose treatment is under review, or the alternative therapy, if any, recommended by the employer or other entity.

(6) The employee or the employee's immediate family.

SEC. 15. Section 4062.01 of the Labor Code is repealed.

SEC. 16. Section 4062.1 of the Labor Code is amended to read:

4062.1. (a) If an employee is not represented by an attorney, the employer shall not seek agreement with the employee on an agreed medical evaluator, nor shall an agreed medical evaluator prepare the formal medical evaluation on any issues in dispute.

(b) If either party requests a medical evaluation pursuant to Section 4060, 4061, or 4062, either party may submit the form prescribed by the administrative director requesting the medical director to assign a panel of three qualified medical evaluators in accordance with Section 139.2. However, the employer may not submit the form unless the employee has not submitted the form within 10 days after the employer has furnished the form to the employee and requested the employee to submit the form. The party submitting the request form shall designate the specialty of the physicians that will be assigned to the panel.

(c) Within 10 days of the issuance of a panel of qualified medical evaluators, the employee shall select a physician from the panel to prepare a medical evaluation, the employee shall schedule the appointment, and the employee shall inform the employer of the selection and the appointment. If the employee does not inform the employer of the selection within 10 days of the assignment of a panel of qualified medical evaluators, then the employer may select the physician from the panel to prepare a medical evaluation. If the employee informs the employer of the selection within 10 days of the assignment of the panel but has not made the appointment, or if the employer selects the physician pursuant to this subdivision, then the employer shall arrange the appointment. Upon receipt of written notice of the appointment arrangements from the employee, or upon giving the employee notice of an appointment arranged by the employer, the employer shall furnish payment of estimated travel expense.

(d) The evaluator shall give the employee, at the appointment, a brief opportunity to ask questions concerning the evaluation process and the evaluator's background. The unrepresented employee shall then participate in the evaluation as requested by the evaluator unless the employee has good cause to discontinue the evaluation. For purposes of this subdivision, ''good cause'' shall include evidence that the evaluator is biased against the employee because of his or her race, sex, national origin, religion, or sexual preference or evidence that the evaluator has requested the employee to submit to an unnecessary medical examination or procedure. If the unrepresented employee declines to proceed with the evaluation, he or she shall have the right to a new panel of three qualified medical evaluators from which to select one to prepare a comprehensive medical evaluation. If the appeals board subsequently

determines that the employee did not have good cause to not proceed with the evaluation, the cost of the evaluation shall be deducted from any award the employee obtains.

(e) If an employee has received a comprehensive medical-legal evaluation under this section, and he or she later becomes represented by an attorney, he or she shall not be entitled to an additional evaluation.

SEC. 17. Section 4062.2 of the Labor Code is repealed.

SEC. 18. Section 4062.2 is added to the Labor Code, to read:

4062.2. (a) Whenever a comprehensive medical evaluation is required to resolve any dispute arising out of an injury or a claimed injury occurring on or after January 1, 2005, and the employee is represented by an attorney, the evaluation shall be obtained only as provided in this section.

(b) If either party requests a medical evaluation pursuant to Section 4060, 4061, or 4062, either party may commence the selection process for an agreed medical evaluator by making a written request naming at least one proposed physician to be the evaluator. The parties shall seek agreement with the other party on the physician, who need not be a qualified medical evaluator, to prepare a report resolving the disputed issue. If no agreement is reached within 10 days of the first written proposal that names a proposed agreed medical evaluator, or any additional time not to exceed 20 days agreed to by the parties, either party may request the assignment of a three-member panel of qualified medical evaluators to conduct a comprehensive medical evaluation. The party submitting the request shall designate the specialty of the medical evaluator, the specialty of the medical evaluator requested by the other party if it has been made known to the party submitting the request, and the specialty of the treating physician. The party submitting the request form shall serve a copy of the request form on the other party.

(c) Within 10 days of assignment of the panel by the administrative director, the parties shall confer and attempt to agree upon an agreed medical evaluator selected from the panel. If the parties have not agreed on a medical evaluator from the panel by the 10th day after assignment of the panel, each party may then strike one name from the panel. The remaining qualified medical evaluator shall serve as the medical evaluator. If a party fails to exercise the right to strike a name from the panel within three working days of gaining the right to do so, the other party may select any physician who remains on the panel to serve as the medical evaluator. The administrative director may prescribe the form, the manner, or both, by which the parties shall conduct the selection process.

(d) The represented employee shall be responsible for arranging the appointment for the examination, but upon his or her failure to inform the employer of the appointment within 10 days after the medical

evaluator has been selected, the employer may arrange the appointment and notify the employee of the arrangements.

(e) If an employee has received a comprehensive medical-legal evaluation under this section, and he or she later ceases to be represented, he or she shall not be entitled to an additional evaluation.

SEC. 19. Section 4062.3 is added to the Labor Code, to read:

4062.3. (a) Any party may provide to the qualified medical evaluator selected from a panel any of the following information:

(1) Records prepared or maintained by the employee's treating physician or physicians.

(2) Medical and nonmedical records relevant to determination of the medical issue.

(b) Information that a party proposes to provide to the qualified medical evaluator selected from a panel shall be served on the opposing party 20 days before the information is provided to the evaluator. If the opposing party objects to consideration of nonmedical records within 10 days thereafter, the records shall not be provided to the evaluator. Either party may use discovery to establish the accuracy or authenticity of nonmedical records prior to the evaluation.

(c) If an agreed medical evaluator is selected, as part of their agreement on an evaluator, the parties shall agree on what information is to be provided to the agreed medical evaluator.

(d) In any formal medical evaluation, the agreed or qualified medical evaluator shall identify the following:

(1) All information received from the parties.

(2) All information reviewed in preparation of the report.

(3) All information relied upon in the formulation of his or her opinion.

(e) All communications with an agreed medical evaluator or a qualified medical evaluator selected from a panel before a medical evaluation shall be in writing and shall be served on the opposing party 20 days in advance of the evaluation. Any subsequent communication with the medical evaluator shall be in writing and shall be served on the opposing party when sent to the medical evaluator.

(f) Ex parte communication with an agreed medical evaluator or a qualified medical evaluator selected from a panel is prohibited. If a party communicates with the agreed medical evaluator or the qualified medical evaluator in violation of subdivision (e), the aggrieved party may elect to terminate the medical evaluation and seek a new evaluation from another qualified medical evaluator to be selected according to Section 4062.1 or 4062.2, as applicable, or proceed with the initial evaluation.

(g) The party making the communication prohibited by this section shall be subject to being charged with contempt before the appeals board

and shall be liable for the costs incurred by the aggrieved party as a result of the prohibited communication, including the cost of the medical evaluation, additional discovery costs, and attorney's fees for related discovery.

(h) Subdivisions (e) and (f) shall not apply to oral or written communications by the employee or, if the employee is deceased, the employee's dependent, in the course of the examination or at the request of the evaluator in connection with the examination.

(i) Upon completing a determination of the disputed medical issue, the medical evaluator shall summarize the medical findings on a form prescribed by the administrative director and shall serve the formal medical evaluation and the summary form on the employee and the employer. The medical evaluation shall address all contested medical issues arising from all injuries reported on one or more claim forms prior to the date of the employee's initial appointment with the medical evaluator.

(j) If, after a medical evaluation is prepared, the employer or the employee subsequently objects to any new medical issue, the parties, to the extent possible, shall utilize the same medical evaluator who prepared the previous evaluation to resolve the medical dispute.

(k) No disputed medical issue specified in subdivision (a) may be the subject of declaration of readiness to proceed unless there has first been an evaluation by the treating physician or an agreed or qualified medical evaluator.

SEC. 20. Section 4062.5 of the Labor Code is amended to read:

4062.5. If a qualified medical evaluator selected from a panel fails to complete the formal medical evaluation within the timeframes established by the administrative director pursuant to paragraph (1) of subdivision (j) of Section 139.2, a new evaluation may be obtained upon the request of either party, as provided in Sections 4062.1 or 4062.2. Neither the employee nor the employer shall have any liability for payment for the formal medical evaluation which was not completed within the required timeframes unless the employee or employer, on forms prescribed by the administrative director, each waive the right to a new evaluation and elects to accept the original evaluation even though it was not completed within the required timeframes.

SEC. 21. Section 4062.8 is added to the Labor Code, to read:

4062.8. The administrative director shall develop, not later than January 1, 2004, and periodically revise as necessary thereafter, educational materials to be used to provide treating physicians, as described in Section 3209.3, or other providers, as described in Section 3209.5, with information and training in basic concepts of workers' compensation, the role of the treating physician, the conduct of permanent and stationary evaluations, and report writing, as appropriate.

SEC. 22. Section 4062.9 of the Labor Code is repealed.

SEC. 23. Section 4600 of the Labor Code is amended to read:

4600. (a) Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury shall be provided by the employer. In the case of his or her neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

(b) As used in this division and notwithstanding any other provision of law, medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27 or, prior to the adoption of those guidelines, the updated American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines.

(c) Unless the employer or the employer's insurer has established a medical provider network as provided for in Section 4616, after 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area.

(d) (1) If an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury if either of the following conditions exist:

(A) The employer provides nonoccupational group health coverage in a health care service plan, licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(B) The employer provides nonoccupational health coverage in a group health plan or a group health insurance policy as described in Section 4616.7.

(2) For purposes of paragraph (1), a personal physician shall meet all of the following conditions:

(A) The physician is the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(B) The physician is the employee's primary care physician and has previously directed the medical treatment of the employee, and who retains the employee's medical records, including his or her medical history.

(C) The physician agrees to be predesignated.

(3) If the employer provides nonoccupational health care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the employer is notified pursuant to paragraph (1), all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code. Disputes regarding the provision of medical treatment shall be resolved pursuant to Article 5.55 (commencing with Section 1374.30) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(4) If the employer provides nonoccupational health care, as described in Section 4616.7, all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by the applicable provisions of the Insurance Code.

(5) The insurer may require prior authorization of any nonemergency treatment or diagnostic service and may conduct reasonably necessary utilization review pursuant to Section 4610.

(6) The maximum percentage of all employees who are covered under paragraph (1) that may be predesignated at any time in the state is 7 percent.

(7) If any court finds that any portion of this subdivision is invalid or in violation of any state or federal law, then this subdivision shall be inoperative.

(8) The division shall conduct an evaluation of this program and present its findings to the Governor and the Legislature on or before March 1, 2006.

(9) This subdivision shall remain in effect only until April 30, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before April 30, 2007, deletes or extends that date.

(e) (1) When at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, the employee submits to examination by a physician, he or she shall be entitled to receive, in addition to all other benefits herein provided, all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination.

(2) Regardless of the date of injury, ''reasonable expenses of transportation'' includes mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents ($0.21) a mile or the mileage rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code, whichever is higher, plus any bridge tolls. The mileage and tolls

shall be paid to the employee at the time he or she is given notification of the time and place of the examination.

(f) When at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language, he or she shall be entitled to the services of a qualified interpreter in accordance with conditions and a fee schedule prescribed by the administrative director. These services shall be provided by the employer. For purposes of this section, ''qualified interpreter'' means a language interpreter certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code.

SEC. 24. Section 4603.2 of the Labor Code is amended to read:

4603.2. (a) Upon selecting a physician pursuant to Section 4600, the employee or physician shall forthwith notify the employer of the name and address of the physician. The physician shall submit a report to the employer within five working days from the date of the initial examination and shall submit periodic reports at intervals that may be prescribed by rules and regulations adopted by the administrative director.

(b) (1) Except as provided in subdivision (d) of Section 4603.4, or under contracts authorized under Section 5307.11, payment for medical treatment provided or authorized by the treating physician selected by the employee or designated by the employer shall be made at reasonable maximum amounts in the official medical fee schedule, pursuant to Section 5307.1, in effect on the date of service. Payments shall be made by the employer within 45 working days after receipt of each separate, itemization of medical services provided, together with any required reports and any written authorization for services that may have been received by the physician. If the itemization or a portion thereof is contested, denied, or considered incomplete, the physician shall be notified, in writing, that the itemization is contested, denied, or considered incomplete, within 30 working days after receipt of the itemization by the employer. A notice that an itemization is incomplete shall state all additional information required to make a decision. Any properly documented list of services provided not paid at the rates then in effect under Section 5307.1 within the 45-working-day period shall be increased by 15 percent, together with interest at the same rate as judgments in civil actions retroactive to the date of receipt of the itemization, unless the employer does both of the following:

(A) Pays the provider at the rates in effect within the 45-working-day period.

(B) Advises, in the manner prescribed by the administrative director, the physician, or another provider of the items being contested, the reasons for contesting these items, and the remedies available to the physician or the other provider if he or she disagrees. In the case of an itemization that includes services provided by a hospital, outpatient surgery center, or independent diagnostic facility, advice that a request has been made for an audit of the itemization shall satisfy the requirements of this paragraph.

If an employer contests all or part of an itemization, any amount determined payable by the appeals board shall carry interest from the date the amount was due until it is paid. If any contested itemization is determined payable by the appeals board, the defendant shall be ordered to reimburse the provider for any filing fees paid pursuant to Section 4903.05.

An employer's liability to a physician or another provider under this section for delayed payments shall not affect its liability to an employee under Section 5814 or any other provision of this division.

(2) Notwithstanding paragraph (1), if the employer is a governmental entity, payment for medical treatment provided or authorized by the treating physician selected by the employee or designated by the employer shall be made within 60 working days after receipt of each separate itemization, together with any required reports and any written authorization for services that may have been received by the physician.

(c) Any interest or increase in compensation paid by an insurer pursuant to this section shall be treated in the same manner as an increase in compensation under subdivision (d) of Section 4650 for the purposes of any classification of risks and premium rates, and any system of merit rating approved or issued pursuant to Article 2 (commencing with Section 11730) of Chapter 3 of Part 3 of Division 2 of the Insurance Code.

(d) (1) Whenever an employer or insurer employs an individual or contracts with an entity to conduct a review of an itemization submitted by a physician or medical provider, the employer or insurer shall make available to that individual or entity all documentation submitted together with that itemization by the physician or medical provider. When an individual or entity conducting a itemization review determines that additional information or documentation is necessary to review the itemization, the individual or entity shall contact the claims administrator or insurer to obtain the necessary information or documentation that was submitted by the physician or medical provider pursuant to subdivision (b).

(2) An individual or entity reviewing an itemization of service submitted by a physician or medical provider shall not alter the procedure codes listed or recommend reduction of the amount of the

payment unless the documentation submitted by the physician or medical provider with the itemization of service has been reviewed by that individual or entity. If the reviewer does not recommend payment for services as itemized by the physician or medical provider, the explanation of review shall provide the physician or medical provider with a specific explanation as to why the reviewer altered the procedure code or changed other parts of the itemization and the specific deficiency in the itemization or documentation that caused the reviewer to conclude that the altered procedure code or amount recommended for payment more accurately represents the service performed.

(3) The appeals board shall have jurisdiction over disputes arising out of this subdivision pursuant to Section 5304.

SEC. 25. Section 4604.5 of the Labor Code is amended to read:

4604.5. (a) Upon adoption by the administrative director of a medical treatment utilization schedule pursuant to Section 5307.27, the recommended guidelines set forth in the schedule shall be presumptively correct on the issue of extent and scope of medical treatment. The presumption is rebuttable and may be controverted by a preponderance of the scientific medical evidence establishing that a variance from the guidelines is reasonably required to cure or relieve the injured worker from the effects of his or her injury. The presumption created is one affecting the burden of proof.

(b) The recommended guidelines set forth in the schedule adopted pursuant to subdivision (a) shall reflect practices that are evidence and scientifically based, nationally recognized, and peer-reviewed. The guidelines shall be designed to assist providers by offering an analytical framework for the evaluation and treatment of injured workers, and shall constitute care in accordance with Section 4600 for all injured workers diagnosed with industrial conditions.

(c) Three months after the publication date of the updated American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, and continuing until the effective date of a medical treatment utilization schedule, pursuant to Section 5307.27, the recommended guidelines set forth in the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines shall be presumptively correct on the issue of extent and scope of medical treatment, regardless of date of injury. The presumption is rebuttable and may be controverted by a preponderance of the evidence establishing that a variance from the guidelines is reasonably required to cure and relieve the employee from the effects of his or her injury, in accordance with Section 4600. The presumption created is one affecting the burden of proof.

(d) (1) Notwithstanding the medical treatment utilization schedule or the guidelines set forth in the American College of Occupational and

Environmental Medicine's Occupational Medicine Practice Guidelines, for injuries occurring on and after January 1, 2004, an employee shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury.

(2) This subdivision shall not apply when an employer authorizes, in writing, additional visits to a health care practitioner for physical medicine services.

(e) For all injuries not covered by the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines or official utilization schedule after adoption pursuant to Section 5307.27, authorized treatment shall be in accordance with other evidence based medical treatment guidelines generally recognized by the national medical community and that are scientifically based.

SEC. 27. Article 2.3 (commencing with Section 4616) is added to Chapter 2 of Part 2 of Division 4 of the Labor Code, to read:

Article 2.3. Medical Provider Networks

4616. (a) (1) On or after January 1, 2005, an insurer or employer may establish or modify a medical provider network for the provision of medical treatment to injured employees. The network shall include physicians primarily engaged in the treatment of occupational injuries and physicians primarily engaged in the treatment of nonoccupational injuries. The goal shall be at least 25 percent of physicians primarily engaged in the treatment of nonoccupational injuries. The administrative director shall encourage the integration of occupational and nonoccupational providers. The number of physicians in the medical provider network shall be sufficient to enable treatment for injuries or conditions to be provided in a timely manner. The provider network shall include an adequate number and type of physicians, as described in Section 3209.3, or other providers, as described in Section 3209.5, to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged, and the geographic area where the employees are employed.

(2) Medical treatment for injuries shall be readily available at reasonable times to all employees. To the extent feasible, all medical treatment for injuries shall be readily accessible to all employees. With respect to availability and accessibility of treatment, the administrative director shall consider the needs of rural areas, specifically those in which health facilities are located at least 30 miles apart.

(b) The employer or insurer shall submit a plan for the medical provider network to the administrative director for approval. The administrative director shall approve the plan if he or she determines that

the plan meets the requirements of this section. If the administrative director does not act on the plan within 60 days of submitting the plan, it shall be deemed approved.

(c) Physician compensation may not be structured in order to achieve the goal of reducing, delaying, or denying medical treatment or restricting access to medical treatment.

(d) If the employer or insurer meets the requirements of this section, the administrative director may not withhold approval or disapprove an employer's or insurer's medical provider network based solely on the selection of providers. In developing a medical provider network, an employer or insurer shall have the exclusive right to determine the members of their network.

(e) All treatment provided shall be provided in accordance with the medical treatment utilization schedule established pursuant to Section 5307.27 or the American College of Occupational Medicine's Occupational Medicine Practice Guidelines, as appropriate.

(f) No person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, when these services are within the scope of the physician's practice, may modify, delay, or deny requests for authorization of medical treatment.

(g) On or before November 1, 2004, the administrative director, in consultation with the Department of Managed Health Care, shall adopt regulations implementing this article. The administrative director shall develop regulations that establish procedures for purposes of making medical provider network modifications.

4616.1. (a) An insurer or employer that offers a medical provider network under this division and that uses economic profiling shall file with the administrative director a description of any policies and procedures related to economic profiling utilized by the insurer or employer. The filing shall describe how these policies and procedures are used in utilization review, peer review, incentive and penalty programs, and in provider retention and termination decisions. The insurer or employer shall provide a copy of the filing to an individual physician, provider, medical group, or individual practice association.

(b) The administrative director shall make each insurer's or employer's filing available to the public upon request. The administrative director may not publicly disclose any information submitted pursuant to this section that is determined by the administrative director to be confidential pursuant to state or federal law.

(c) For the purposes of this article, ''economic profiling'' shall mean any evaluation of a particular physician, provider, medical group, or individual practice association based in whole or in part on the economic costs or utilization of services associated with medical care provided or

authorized by the physician, provider, medical group, or individual practice association.

4616.2. (a) An insurer or employer that arranges for care for injured employees through a medical provider network shall file a written continuity of care policy with the administrative director.

(b) If approved by the administrative director, the provisions of the written continuity of care policy shall replace all prior continuity of care policies. The insurer or employer shall file a revision of the continuity of care policy with the administrative director if it makes a material change to the policy.

(c) The insurer or employer shall provide to all employees entering the workers' compensation system notice of its written continuity of care policy and information regarding the process for an employee to request a review under the policy and shall provide, upon request, a copy of the written policy to an employee.

(d) (1) An insurer or employer that offers a medical provider network shall, at the request of an injured employee, provide the completion of treatment as set forth in this section by a terminated provider.

(2) The completion of treatment shall be provided by a terminated provider to an injured employee who, at the time of the contract's termination, was receiving services from that provider for one of the conditions described in paragraph (3).

(3) The insurer or employer shall provide for the completion of treatment for the following conditions subject to coverage through the workers' compensation system:

(A) An acute condition. An acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration. Completion of treatment shall be provided for the duration of the acute condition.

(B) A serious chronic condition. A serious chronic condition is a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain remission or prevent deterioration. Completion of treatment shall be provided for a period of time necessary to complete a course of treatment and to arrange for a safe transfer to another provider, as determined by the insurer or employer in consultation with the injured employee and the terminated provider and consistent with good professional practice. Completion of treatment under this paragraph shall not exceed 12 months from the contract termination date.

(C) A terminal illness. A terminal illness is an incurable or irreversible condition that has a high probability of causing death within

one year or less. Completion of treatment shall be provided for the duration of a terminal illness.

(D) Performance of a surgery or other procedure that is authorized by the insurer or employer as part of a documented course of treatment and has been recommended and documented by the provider to occur within 180 days of the contract's termination date.

(4) (A) The insurer or employer may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, the insurer or employer is not required to continue the provider's services beyond the contract termination date.

(B) Unless otherwise agreed by the terminated provider and the insurer or employer, the services rendered pursuant to this section shall be compensated at rates and methods of payment similar to those used by the insurer or employer for currently contracting providers providing similar services who are practicing in the same or a similar geographic area as the terminated provider. The insurer or provider is not required to continue the services of a terminated provider if the provider does not accept the payment rates provided for in this paragraph.

(5) An insurer or employer shall ensure that the requirements of this section are met.

(6) This section shall not require an insurer or employer to provide for completion of treatment by a provider whose contract with the insurer or employer has been terminated or not renewed for reasons relating to a medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Profession Code, or fraud or other criminal activity.

(7) Nothing in this section shall preclude an insurer or employer from providing continuity of care beyond the requirements of this section.

(e) The insurer or employer may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, the insurer or employer is not required to continue the provider's services beyond the contract termination date.

4616.3. (a) When the injured employee notifies the employer of the injury or files a claim for workers' compensation with the employer, the employer shall arrange an initial medical evaluation and begin treatment as required by Section 4600.

(b) The employer shall notify the employee of his or her right to be treated by a physician of his or her choice after the first visit from the medical provider network established pursuant to this article, and the method by which the list of participating providers may be accessed by the employee.

(c) If an injured employee disputes either the diagnosis or the treatment prescribed by the treating physician, the employee may seek the opinion of another physician in the medical provider network. If the injured employee disputes the diagnosis or treatment prescribed by the second physician, the employee may seek the opinion of a third physician in the medical provider network.

(d) (1) Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician's specialty or recognized expertise in treating the particular injury or condition in question.

(2) Treatment by a specialist who is not a member of the medical provider network may be permitted on a case-by-case basis if the medical provider network does not contain a physician who can provide the approved treatment and the treatment is approved by the employer or the insurer.

4616.4. (a) (1) The administrative director shall contract with individual physicians, as described in paragraph (2), or an independent medical review organization to perform independent medical reviews pursuant to this section.

(2) Only physicians licensed pursuant to Chapter 5 (commencing with Section 2000) of the Business and Professions Code may be independent medical reviewers.

(3) The administrative director shall ensure that the independent medical reviewers or those within the review organization shall do all of the following:

(A) Be appropriately credentialed and privileged.

(B) Ensure that the reviews provided by the medical professionals are timely, clear, and credible, and that reviews are monitored for quality on an ongoing basis.

(C) Ensure that the method of selecting medical professionals for individual cases achieves a fair and impartial panel of medical professionals who are qualified to render recommendations regarding the clinical conditions consistent with the medical utilization schedule established pursuant to Section 5307.27, or the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines.

(D) Ensure that confidentiality of medical records and the review materials, consistent with the requirements of this section and applicable state and federal law.

(E) Ensure the independence of the medical professionals retained to perform the reviews through conflict-of-interest policies and prohibitions, and ensure adequate screening for conflicts of interest.

(4) Medical professionals selected by the administrative director or the independent medical review organizations to review medical treatment decisions shall be physicians, as specified in paragraph (2) of subdivision (a), who meet the following minimum requirements:

(A) The medical professional shall be a clinician knowledgeable in the treatment of the employee's medical condition, knowledgeable about the proposed treatment, and familiar with guidelines and protocols in the area of treatment under review.

(B) Notwithstanding any other provision of law, the medical professional shall hold a nonrestricted license in any state of the United States, and for physicians, a current certification by a recognized American medical specialty board in the area or areas appropriate to the condition or treatment under review.

(C) The medical professional shall have no history of disciplinary action or sanctions, including, but not limited to, loss of staff privileges or participation restrictions taken or pending by any hospital, government, or regulatory body.

(b) If, after the third physician's opinion, the treatment or diagnostic service remains disputed, the injured employee may request independent medical review regarding the disputed treatment or diagnostic service still in dispute after the third physician's opinion in accordance with Section 4616.3. The standard to be utilized for independent medical review is identical to that contained in the medical treatment utilization schedule established in Section 5307.27, or the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, as appropriate.

(c) Applications for independent medical review shall be submitted to the administrative director on a one-page form provided by the administrative director entitled ''Independent Medical Review Application.'' The form shall contain a signed release from the injured employee, or a person authorized pursuant to law to act on behalf of the injured employee, authorizing the release of medical and treatment information. The injured employee may provide any relevant material or documentation with the application. The administrative director or the independent medical review organization shall assign the independent medical reviewer.

(d) Following receipt of the application for independent medical review, the employer or insurer shall provide the independent medical reviewer, assigned pursuant to subdivision (c), with all information that was considered in relation to the disputed treatment or diagnostic service, including both of the following:

(1) A copy of all correspondence from, and received by, any treating physician who provided a treatment or diagnostic service to the injured employee in connection with the injury.

(2) A complete and legible copy of all medical records and other information used by the physicians in making a decision regarding the disputed treatment or diagnostic service.

(e) Upon receipt of information and documents related to the application for independent medical review, the independent medical reviewer shall conduct a physical examination of the injured employee at the employee's discretion. The reviewer may order any diagnostic tests necessary to make his or her determination regarding medical treatment. Utilizing the medical treatment utilization schedule established pursuant to Section 5307.27, or the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, as appropriate, and taking into account any reports and information provided, the reviewer shall determine whether the disputed health care service was consistent with Section 5307.27 or the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines based on the specific medical needs of the injured employee.

(f) The independent medical reviewer shall issue a report to the administrative director, in writing, and in layperson's terms to the maximum extent practicable, containing his or her analysis and determination whether the disputed health care service was consistent with the medical treatment utilization schedule established pursuant to Section 5307.27, or the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, as appropriate, within 30 days of the examination of the injured employee, or within less time as prescribed by the administrative director. If the disputed health care service has not been provided and the independent medical reviewer certifies in writing that an imminent and serious threat to the health of the injured employee may exist, including, but not limited to, serious pain, the potential loss of life, limb, or major bodily function, or the immediate and serious deterioration of the injured employee, the report shall be expedited and rendered within three days of the examination by the independent medical reviewer. Subject to the approval of the administrative director, the deadlines for analyses and determinations involving both regular and expedited reviews may be extended by the administrative director for up to three days in extraordinary circumstances or for good cause.

(g) The independent medical reviewer's analysis shall cite the injured employee's medical condition, the relevant documents in the record, and the relevant findings associated with the documents or any other

information submitted to the reviewer in order to support the determination.

(h) The administrative director shall immediately adopt the determination of the independent medical reviewer, and shall promptly issue a written decision to the parties.

(i) If the determination of the independent medical reviewer finds that the disputed treatment or diagnostic service is consistent with Section 5307.27 or the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, the injured employee may seek the disputed treatment or diagnostic service from a physician of his or her choice from within or outside the medical provider network. Treatment outside the medical provider network shall be provided consistent with Section 5307.27 or the American College of Occupational and Environmental Medicine's Occupational Practice Guidelines. The employer shall be liable for the cost of any approved medical treatment in accordance with Section 5307.1 or 5307.11.

4616.5. For purposes of this article, ''employer'' means a self-insured employer, joint powers authority, or the state.

4616.6. No additional examinations shall be ordered by the appeals board and no other reports shall be admissable to resolve any controversy arising out of this article.

4616.7. (a) A health care organization certified pursuant to Section 4600.5 shall be deemed approved pursuant to this article if it meets the percentage required for physicians primarily engaged in nonoccupational medicine specified in subdivision (a) of Section 4616 and all the other requirements of this article are met, as determined by the administrative director.

(b) A health care service plan, licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, shall be deemed approved for purposes of this article if it has a reasonable number of physicians with competency in occupational medicine, as determined by the administrative director.

(c) A group disability insurance policy, as defined in subdivision (b) of Section 106 of the Insurance Code, that covers hospital, surgical, and medical care expenses shall be deemed approved for purposes of this article if it has a reasonable number of physicians with competency in occupational medicine, as determined by the administrative director. For the purposes of this section, a group disability insurance policy shall not include Medicare supplement, vision-only, dental-only, and Champus-supplement insurance. For purposes of this section, a group disability insurance policy shall not include hospital indemnity, accident-only, and specified disease insurance that pays benefits on a fixed benefit, cash-payment-only basis.

(d) Any Taft-Hartley health and welfare fund shall be deemed approved for purposes of this article if it has a reasonable number of physicians with competency in occupational medicine, as determined by the administrative director.

SEC. 28. Section 4650 of the Labor Code is amended to read:

4650. (a) If an injury causes temporary disability, the first payment of temporary disability indemnity shall be made not later than 14 days after knowledge of the injury and disability, on which date all indemnity then due shall be paid, unless liability for the injury is earlier denied.

(b) If the injury causes permanent disability, the first payment shall be made within 14 days after the date of last payment of temporary disability indemnity. When the last payment of temporary disability indemnity has been made pursuant to subdivision (c) of Section 4656, and regardless of whether the extent of permanent disability can be determined at that date, the employer nevertheless shall commence the timely payment required by this subdivision and shall continue to make these payments until the employer's reasonable estimate of permanent disability indemnity due has been paid, and if the amount of permanent disability indemnity due has been determined, until that amount has been paid.

(c) Payment of temporary or permanent disability indemnity subsequent to the first payment shall be made as due every two weeks on the day designated with the first payment.

(d) If any indemnity payment is not made timely as required by this section, the amount of the late payment shall be increased 10 percent and shall be paid, without application, to the employee, unless the employer continues the employee's wages under a salary continuation plan, as defined in subdivision (g). No increase shall apply to any payment due prior to or within 14 days after the date the claim form was submitted to the employer under Section 5401. No increase shall apply when, within the 14-day period specified under subdivision (a), the employer is unable to determine whether temporary disability indemnity payments are owed and advises the employee, in the manner prescribed in rules and regulations adopted pursuant to Section 138.4, why payments cannot be made within the 14-day period, what additional information is required to make the decision whether temporary disability indemnity payments are owed, and when the employer expects to have the information required to make the decision.

(e) If the employer is insured for its obligation to provide compensation, the employer shall be obligated to reimburse the insurer for the amount of increase in indemnity payments, made pursuant to subdivision (d), if the late payment which gives rise to the increase in indemnity payments, is due less than seven days after the insurer receives the completed claim form from the employer. Except as

specified in this subdivision, an employer shall not be obligated to reimburse an insurer nor shall an insurer be permitted to seek reimbursement, directly or indirectly, for the amount of increase in indemnity payments specified in this section.

(f) If an employer is obligated under subdivision (e) to reimburse the insurer for the amount of increase in indemnity payments, the insurer shall notify the employer in writing, within 30 days of the payment, that the employer is obligated to reimburse the insurer and shall bill and collect the amount of the payment no later than at final audit. However, the insurer shall not be obligated to collect, and the employer shall not be obligated to reimburse, amounts paid pursuant to subdivision (d) unless the aggregate total paid in a policy year exceeds one hundred dollars ($100). The employer shall have 60 days, following notice of the obligation to reimburse, to appeal the decision of the insurer to the Department of Insurance. The notice of the obligation to reimburse shall specify that the employer has the right to appeal the decision of the insurer as provided in this subdivision.

(g) For purposes of this section, ''salary continuation plan'' means a plan that meets both of the following requirements:

(1) The plan is paid for by the employer pursuant to statute, collective bargaining agreement, memorandum of understanding, or established employer policy.

(2) The plan provides the employee on his or her regular payday with salary not less than the employee is entitled to receive pursuant to statute, collective bargaining agreement, memorandum of understanding, or established employer policy and not less than the employee would otherwise receive in indemnity payments.

SEC. 29. Section 4656 of the Labor Code is amended to read:

4656. (a) Aggregate disability payments for a single injury occurring prior to January 1, 1979, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury.

(b) Aggregate disability payments for a single injury occurring on or after January 1, 1979, and prior to the effective date of subdivision (c), causing temporary partial disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury.

(c) (1) Aggregate disability payments for a single injury occurring on or after the effective date of this subdivision, causing temporary disability shall not extend for more than 104 compensable weeks within a period of two years from the date of commencement of temporary disability payment.

(2) Notwithstanding paragraph (1), for an employee who suffers from the following injuries or conditions, aggregate disability payments for

a single injury occurring on or after the effective date of this subdivision, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury:

(A) Acute and chronic hepatitis B.
(B) Acute and chronic hepatitis C.
(C) Amputations.
(D) Severe burns.
(E) Human immunodeficiency virus (HIV).
(F) High-velocity eye injuries.
(G) Chemical burns to the eyes.
(H) Pulmonary fibrosis.
(I) Chronic lung disease.

SEC. 30. Section 4658 of the Labor Code is amended to read:

4658. (a) For injuries occurring prior to January 1, 1992, if the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two–thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10	3
10–19.75	4
20–29.75	5
30–49.75	6
50–69.75	7
70–99.75	8

The number of weeks for which payments shall be allowed set forth in column 2 above based upon the percentage of permanent disability set forth in column 1 above shall be cumulative, and the number of benefit weeks shall increase with the severity of the disability. The following schedule is illustrative of the computation of the number of benefit weeks:

Column 1—Percentage of permanent disability incurred:	Column 2—Cumulative number of benefit weeks:
5	15.00
10	30.25
15	50.25
20	70.50
25	95.50
30	120.75
35	150.75
40	180.75
45	210.75
50	241.00
55	276.00
60	311.00
65	346.00
70	381.25
75	421.25
80	461.25
85	501.25
90	541.25
95	581.25
100	for life

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents ($78.75).

(b) This subdivision shall apply to injuries occurring on or after January 1, 1992. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two–thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10	3
10–19.75	4
20–24.75	5
25–29.75	6
30–49.75	7
50–69.75	8
70–99.75	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents ($78.75).

(c) This subdivision shall apply to injuries occurring on or after January 1, 2004. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two–thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10	4
10–19.75	5
20–24.75	5
25–29.75	6
30–49.75	7
50–69.75	8
70–99.75	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(d) (1) This subdivision shall apply to injuries occurring on or after the effective date of the revised permanent disability schedule adopted by the administrative director pursuant to Section 4660. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the basic disability payment computed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two–thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0.25–9.75	3
10–14.75	4
15–24.75	5
25–29.75	6
30–49.75	7
50–69.75	8
70–99.75	16

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) If, within 60 days of a disability becoming permanent and stationary, an employer does not offer the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, each disability payment remaining to be paid to the injured employee from the date of the end of the 60-day period shall be paid in accordance with paragraph (1) and increased by 15 percent. This paragraph shall not apply to an employer that employs fewer than 50 employees.

(3) (A) If, within 60 days of a disability becoming permanent and stationary, an employer offers the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, and regardless of whether the injured employee accepts or rejects the offer,

each disability payment remaining to be paid to the injured employee from the date the offer was made shall be paid in accordance with paragraph (1) and decreased by 15 percent.

(B) If the regular work, modified work, or alternative work is terminated by the employer before the end of the period for which disability payments are due the injured employee, the amount of each of the remaining disability payments shall be paid in accordance with paragraph (1) and increased by 15 percent. An employee who voluntarily terminates employment shall not be eligible for payment under this subparagraph. This paragraph shall not apply to an employer that employs fewer than 50 employees.

(4) For compensable claims arising before April 30, 2004, the schedule provided in this subdivision shall not apply to the determination of permanent disabilities when there has been either a comprehensive medical-legal report or a report by a treating physician, indicating the existence of permanent disability, or when the employer is required to provide the notice required by Section 4061 to the injured worker.

SEC. 31. Section 4658.1 is added to the Labor Code, to read:

4658.1. As used in this article, the following definitions apply:

(a) ''Regular work'' means the employee's usual occupation or the position in which the employee was engaged at the time of injury and that offers wages and compensation equivalent to those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.

(b) ''Modified work'' means regular work modified so that the employee has the ability to perform all the functions of the job and that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.

(c) ''Alternative work'' means work that the employee has the ability to perform, that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and that is located within reasonable commuting distance of the employee's residence at the time of injury.

(d) For the purpose of determining whether wages and compensation are equivalent to those paid at the time of injury, the wages and compensation for any increase in working hours over the average hours worked at the time of injury shall not be considered.

(e) For the purpose of determining whether wages and compensation are equivalent to those paid at the time of injury, actual wages and compensation shall be determined without regard to the minimums and maximums set forth in Chapter 1 (commencing with Section 4451).

(f) The condition that regular work, modified work, or alternative work be located within a reasonable distance of the employee's residence at the time of injury may be waived by the employee. The condition shall be deemed to be waived if the employee accepts the regular work, modified work, or alternative work and does not object to the location within 20 days of being informed of the right to object. The condition shall be conclusively deemed to be satisfied if the offered work is at the same location and the same shift as the employment at the time of injury.

SEC. 32. Section 4660 of the Labor Code is amended to read:

4660. (a) In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being given to an employee's diminished future earning capacity.

(b) (1) For purposes of this section, the ''nature of the physical injury or disfigurement'' shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition).

(2) For purposes of this section, an employee's diminished future earning capacity shall be a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The administrative director shall formulate the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies.

(c) The administrative director shall amend the schedule for the determination of the percentage of permanent disability in accordance with this section at least once every five years. This schedule shall be available for public inspection and, without formal introduction in evidence, shall be prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by the schedule.

(d) The schedule shall promote consistency, uniformity, and objectivity. The schedule and any amendment thereto or revision thereof shall apply prospectively and shall apply to and govern only those permanent disabilities that result from compensable injuries received or occurring on and after the effective date of the adoption of the schedule, amendment or revision, as the fact may be. For compensable claims arising before January 1, 2005, the schedule as revised pursuant to changes made in legislation enacted during the 2003–04 Regular and Extraordinary Sessions shall apply to the determination of permanent disabilities when there has been either no comprehensive medical-legal

report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Section 4061 to the injured worker.

(e) On or before January 1, 2005, the administrative director shall adopt regulations to implement the changes made to this section by the act that added this subdivision.

SEC. 33. Section 4663 of the Labor Code is repealed.

SEC. 34. Section 4663 is added to the Labor Code, to read:

4663. (a) Apportionment of permanent disability shall be based on causation.

(b) Any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall in that report address the issue of causation of the permanent disability.

(c) In order for a physician's report to be considered complete on the issue of permanent disability, it must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(d) An employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments.

SEC. 35. Section 4664 is added to the Labor Code, to read:

4664. (a) The employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.

(b) If the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury. This presumption is a presumption affecting the burden of proof.

(c) (1) The accumulation of all permanent disability awards issued with respect to any one region of the body in favor of one individual employee shall not exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be

total in character pursuant to Section 4662. As used in this section, the regions of the body are the following:

(A) Hearing.

(B) Vision.

(C) Mental and behavioral disorders.

(D) The spine.

(E) The upper extremities, including the shoulders.

(F) The lower extremities, including the hip joints.

(G) The head, face, cardiovascular system, respiratory system, and all other systems or regions of the body not listed in subparagraphs (A) to (F), inclusive.

(2) Nothing in this section shall be construed to permit the permanent disability rating for each individual injury sustained by an employee arising from the same industrial accident, when added together, from exceeding 100 percent.

SEC. 36. Section 4706.5 of the Labor Code is amended to read:

4706.5. (a) Whenever any fatal injury is suffered by an employee under circumstances that would entitle the employee to compensation benefits, but for his or her death, and the employee does not leave surviving any person entitled to a dependency death benefit, the employer shall pay a sum to the Department of Industrial Relations equal to the total dependency death benefit that would be payable to a surviving spouse with no dependent minor children.

(b) When the deceased employee leaves no surviving dependent, personal representative, heir, or other person entitled to the accrued and unpaid compensation referred to in Section 4700, the accrued and unpaid compensation shall be paid by the employer to the Department of Industrial Relations.

(c) The payments to be made to the Department of Industrial Relations, as required by subdivisions (a) and (b), shall be deposited in the General Fund and shall be credited, as a reimbursement, to any appropriation to the Department of Industrial Relations for payment of the additional compensation for subsequent injury provided in Article 5 (commencing with Section 4751), in the fiscal year in which the Controller's receipt is issued.

(d) The payments to be made to the Department of Industrial Relations, as required by subdivision (a), shall be paid to the department in a lump sum in the manner provided in subdivision (b) of Section 5101.

(e) The Department of Industrial Relations shall keep a record of all payments due the state under this section, and shall take any steps as may be necessary to collect those amounts.

(f) Each employer, or the employer's insurance carrier, shall notify the administrative director, in any form as the administrative director may prescribe, of each employee death, except when the employer has

actual knowledge or notice that the deceased employee left a surviving dependent.

(g) When, after a reasonable search, the employer concludes that the deceased employee left no one surviving who is entitled to a dependency death benefit, and concludes that the death was under circumstances that would entitle the employee to compensation benefits, the employer may voluntarily make the payment referred to in subdivision (a). Payments so made shall be construed as payments made pursuant to an appeals board findings and award. Thereafter, if the appeals board finds that the deceased employee did in fact leave a person surviving who is entitled to a dependency death benefit, upon that finding, all payments referred to in subdivision (a) that have been made shall be forthwith returned to the employer, or if insured, to the employer's workers' compensation carrier that indemnified the employer for the loss.

SEC. 37. Section 4750 of the Labor Code is repealed.

SEC. 38. Section 4750.5 of the Labor Code is repealed.

SEC. 39. Section 4903.05 of the Labor Code is amended to read:

4903.05. (a) A filing fee of one hundred dollars ($100) shall be charged for each initial lien filed by providers, or on behalf of providers, pursuant to subdivision (b) of Section 4903.

(b) No filing fee shall be required for liens filed by the Veterans Administration, the Medi-Cal program, or public hospitals.

(c) The filing fee shall be collected by the court administrator. All fees shall be deposited in the Workers' Compensation Administration Revolving Fund. Any fees collected from providers that have not been redistributed to providers pursuant to paragraph (2) of subdivision (b) of Section 4603.2, shall be used to offset the amount of fees assessed on employers under Section 62.5.

(d) The court administrator shall adopt reasonable rules and regulations governing the procedures for the collection of the filing fee.

SEC. 40. Section 5402 of the Labor Code is amended to read:

5402. (a) Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400.

(b) If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 90-day period.

(c) Within one working day after an employee files a claim form under Section 5401, the employer shall authorize the provision of all treatment, consistent with Section 5307.27 or the American College of

Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, for the alleged injury and shall continue to provide the treatment until the date that liability for the claim is accepted or rejected. Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand dollars ($10,000).

(d) Treatment provided under subdivision (c) shall not give rise to a presumption of liability on the part of the employer.

SEC. 41. Section 5703 of the Labor Code is amended to read:

5703. The appeals board may receive as evidence either at or subsequent to a hearing, and use as proof of any fact in dispute, the following matters, in addition to sworn testimony presented in open hearing:

(a) Reports of attending or examining physicians.

(1) Statements concerning any bill for services are admissible only if made under penalty of perjury that they are true and correct to the best knowledge of the physician.

(2) In addition, reports are admissible under this subdivision only if the physician has further stated in the body of the report that there has not been a violation of Section 139.3 and that the contents of the report are true and correct to the best knowledge of the physician. The statement shall be made under penalty of perjury.

(b) Reports of special investigators appointed by the appeals board or a workers' compensation judge to investigate and report upon any scientific or medical question.

(c) Reports of employers, containing copies of timesheets, book accounts, reports, and other records properly authenticated.

(d) Properly authenticated copies of hospital records of the case of the injured employee.

(e) All publications of the Division of Workers' Compensation.

(f) All official publications of the State of California and United States governments.

(g) Excerpts from expert testimony received by the appeals board upon similar issues of scientific fact in other cases and the prior decisions of the appeals board upon similar issues.

(h) Relevant portions of medical treatment protocols published by medical specialty societies. To be admissible, the party offering such a protocol or portion of a protocol shall concurrently enter into evidence information regarding how the protocol was developed, and to what extent the protocol is evidence-based, peer-reviewed, and nationally recognized. If a party offers into evidence a portion of a treatment protocol, any other party may offer into evidence additional portions of the protocol. The party offering a protocol, or portion thereof, into evidence shall either make a printed copy of the full protocol available

for review and copying, or shall provide an Internet address at which the entire protocol may be accessed without charge.

(i) The medical treatment utilization schedule in effect pursuant to Section 5307.27 or the guidelines in effect pursuant to Section 4604.5.

SEC. 42. Section 5814 of the Labor Code is amended to read:

5814. (a) When payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the full amount of the order, decision, or award shall be increased by 10 percent. Multiple increases shall not be awarded for repeated delays in making a series of payments due for the same type or specie of benefit unless there has been a legally significant event between the delay and the subsequent delay in payments of the same type or specie of benefits. The question of delay and the reasonableness of the cause therefor shall be determined by the appeals board in accordance with the facts. This delay or refusal shall constitute good cause under Section 5803 to rescind, alter, or amend the order, decision, or award for the purpose of making the increase provided for herein.

(b) This section shall become inoperative on June 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 43. Section 5814 is added to the Labor Code, to read:

5814. (a) When payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the payment unreasonably delayed or refused shall be increased up to 25 percent or up to ten thousand dollars ($10,000), whichever is less. In any proceeding under this section, the appeals board shall use its discretion to accomplish a fair balance and substantial justice between the parties.

(b) If a potential violation of this section is discovered by the employer prior to an employee claiming a penalty under this section, the employer, within 90 days of the date of the discovery, may pay a self-imposed penalty in the amount of 10 percent of the amount of the payment unreasonably delayed or refused, along with the amount of the payment delayed or refused. This self-imposed penalty shall be in lieu of the penalty in subdivision (a).

(c) Upon the approval of a compromise and release, findings and awards, or stipulations and orders by the appeals board, it shall be conclusively presumed that any accrued claims for penalty have been resolved, regardless of whether a petition for penalty has been filed, unless the claim for penalty is expressly excluded by the terms of the order or award. Upon the submission of any issue for determination at a regular trial hearing, it shall be conclusively presumed that any accrued claim for penalty in connection with the benefit at issue has been

resolved, regardless of whether a petition for penalty has been filed, unless the issue of penalty is also submitted or is expressly excluded in the statement of issues being submitted.

(d) The payment of any increased award pursuant to subdivision (a) shall be reduced by any amount paid under subdivision (d) of Section 4650 on the same unreasonably delayed or refused benefit payment.

(e) No unreasonable delay in the provision of medical treatment shall be found when the treatment has been authorized by the employer in a timely manner and the only dispute concerns payment of a billing submitted by a physician or medical provider as provided in Section 4603.2.

(f) Nothing in this section shall be construed to create a civil cause of action.

(g) Notwithstanding any other provision of law, no action may be brought to recover penalties that may be awarded under this section more than two years from the date the payment of compensation was due.

(h) This section shall apply to all injuries, without regard to whether the injury occurs before, on, or after the operative date of this section.

(i) This section shall become operative on June 1, 2004.

SEC. 44. Section 5814.6 is added to the Labor Code, to read:

5814.6. (a) Any employer or insurer that knowingly violates Section 5814 with a frequency that indicates a general business practice is liable for administrative penalties of not to exceed four hundred thousand dollars ($400,000). Penalty payments shall be imposed by the administrative director and deposited into the Return-to-Work Fund established pursuant to Section 139.48.

(b) The administrative director may impose a penalty under either this section or subdivision (e) of Section 129.5.

(c) This section shall become operative on June 1, 2004.

SEC. 45. Section 6401.7 of the Labor Code is amended to read:

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to

provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard. Beginning January 1, 1994, an employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use employee training provided to the employer's employees under a construction industry occupational safety and health training program approved by the division to comply with the requirements of subdivision (a) relating to employee training, and shall only be required to provide training on hazards specific to an employee's job duties.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program. Beginning January 1, 1994, an employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use records relating to employee training provided to the employer in connection with an occupational safety and health training program approved by the division to comply with the requirements of this subdivision, and shall only be required to keep records of those steps taken to implement and maintain the program with respect to hazards specific to an employee's job duties.

(e) (1) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(2) Notwithstanding subdivision (a), for employers with fewer than 20 employees who are in industries that are not on a designated list of

high hazard industries and who have a workers' compensation experience modification rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries that are on a designated list of low hazard industries, the board shall adopt a standard setting forth the employer's duties under this section consistent with the requirements specified in subdivisions (a), (b), and (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a). To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For purposes of this subdivision, the ''designated list of high hazard industries'' shall be the list established pursuant to this paragraph.

For the purpose of implementing this subdivision, the Department of Industrial Relations shall periodically review, and as necessary revise, the list.

(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low hazard industries, and shall periodically review, and as necessary revise, that list.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's (A) periodic, scheduled worksite inspections, (B) investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances, and (C) investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) Upon request from the division, verification of abatement action taken by the employer as specified in division citations.

If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are

not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer that controls or directs and directly supervises its own employees on the job.

(i) When a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency's injury prevention program.

(j) (1) The division shall prepare a Model Injury and Illness Prevention Program for Non-High-Hazard Employment, and shall make copies of the model program prepared pursuant to this subdivision available to employers, upon request, for posting in the workplace. An employer who adopts and implements the model program prepared by the division pursuant to this paragraph in good faith shall not be assessed a civil penalty for the first citation for a violation of this section issued after the employer's adoption and implementation of the model program.

(2) For purposes of this subdivision, the division shall establish a list of non-high-hazard industries in California. These industries, identified by their Standard Industrial Classification Codes, as published by the United States Office of Management and Budget in the Manual of Standard Industrial Classification Codes, 1987 Edition, are apparel and accessory stores (Code 56), eating and drinking places (Code 58), miscellaneous retail (Code 59), finance, insurance, and real estate (Codes 60–67), personal services (Code 72), business services (Code 73), motion pictures (Code 78) except motion picture production and allied services (Code 781), legal services (Code 81), educational services (Code 82), social services (Code 83), museums, art galleries, and botanical and zoological gardens (Code 84), membership organizations (Code 86), engineering, accounting, research, management, and related services (Code 87), private households (Code 88), and miscellaneous services (Code 89). To further identify industries that may be included on the list, the division shall also consider data from a rating organization, as defined in Section 11750.1 of the Insurance Code, the Division of Labor Statistics and Research, and all other appropriate information. The list shall be established by June 30, 1994, and shall be reviewed, and as necessary revised, biennially.

(3) The division shall prepare a Model Injury and Illness Prevention Program for Employers in Industries with Intermittent Employment, and shall determine which industries have historically utilized seasonal or intermittent employees. An employer in an industry determined by the division to have historically utilized seasonal or intermittent employees shall be deemed to have complied with the requirements of subdivision (a) with respect to a written injury prevention program if the employer adopts the model program prepared by the division pursuant to this paragraph and complies with any instructions relating thereto.

(k) With respect to any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, that is a member of, or created by, a joint powers agreement, subdivision (d) shall not apply.

(*l*) Every workers' compensation insurer shall conduct a review, including a written report as specified below, of the injury and illness prevention program (IIPP) of each of its insureds with an experience modification of 2.0 or greater within six months of the commencement of the initial insurance policy term. The review shall determine whether the insured has implemented all of the required components of the IIPP, and evaluate their effectiveness. The training component of the IIPP shall be evaluated to determine whether training is provided to line employees, supervisors, and upper level management, and effectively imparts the information and skills each of these groups needs to ensure that all of the insured's specific health and safety issues are fully addressed by the insured. The reviewer shall prepare a detailed written report specifying the findings of the review and all recommended changes deemed necessary to make the IIPP effective. The reviewer shall be or work under the direction of a licensed California professional engineer, certified safety professional, or a certified industrial hygienist.

SEC. 46. The repeal of the personal physician's or chiropractor's presumption of correctness contained in Section 4062.9 of the Labor Code made by this act shall apply to all cases, regardless of the date of injury, but shall not constitute good cause to reopen or rescind, alter, or amend any existing order, decision, or award of the Workers' Compensation Appeals Board.

SEC. 47. The amendment, addition, or repeal of, any provision of law made by this act shall apply prospectively from the date of enactment of this act, regardless of the date of injury, unless otherwise specified, but shall not constitute good cause to reopen or rescind, alter, or amend any existing order, decision, or award of the Workers' Compensation Appeals Board.

SEC. 48. 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. 49. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide relief to the state from the effects of the current workers' compensation crisis at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 35

An act to amend Sections 101315 and 101317 of, and to repeal Article 6 (commencing with Section 101315) of Chapter 3 of Part 3 of Division 101 of, the Health and Safety Code, relating to public health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 29, 2004. Filed with Secretary of State April 30, 2004.]

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

SECTION 1. Section 101315 of the Health and Safety Code, as added by Section 2 of Chapter 393 of the Statutes of 2002, is amended to read:

101315. (a) Federal funding received by the State Department of Health Services for bioterrorism preparedness and emergency response is subject to appropriation in the annual Budget Act or other statute, commencing with the 2003–04 fiscal year.

(b) This article shall govern those instances when federal funding is allocated and expended for public health preparedness and response by local health jurisdictions for the prevention of, and response to, bioterrorist attacks and other public health emergencies pursuant to the federally approved collaborative state-local plan.

(c) A local health jurisdiction shall be ineligible to receive funding from appropriations made for purposes of this article when that local health jurisdiction receives directly or through another local jurisdiction federal funding for the same purposes. Moneys appropriated for purposes of this article that would have been allocated to a local health jurisdiction that is ineligible, pursuant to this subdivision, to receive funding shall be allocated, as provided in Section 101317, among the remaining local health jurisdictions that are eligible.

(d) Funds appropriated for the purposes of this article shall not be used to supplant funding for existing levels of service and shall only be used for purposes specified in Section 101317.

(e) This article shall apply only when local health jurisdictions are designated by a federal or state agency to manage the funds for public health preparedness and response to bioterrorist attacks and other public health emergencies, pursuant to the federally approved collaborative state-local plan.

SEC. 2. Section 101317 of the Health and Safety Code, as added by Section 2 of Chapter 393 of the Statutes of 2002, is amended to read:

101317. (a) For purposes of this article, allocations shall be made to the administrative bodies of qualifying local health jurisdictions described as public health administrative organizations in Section 101185, and pursuant to Section 101315, in the following manner:

(1) (A) For the 2003–04 fiscal year and subsequent fiscal years, to the administrative bodies of each local health jurisdiction, a basic allotment of one hundred thousand dollars ($100,000), subject to the availability of funds appropriated in the annual Budget Act or some other act.

(B) For the 2002–03 fiscal year, the basic allotment of one hundred thousand dollars ($100,000) shall be reduced by the amount of federal funding allocated as part of a basic allotment for the purposes of this article to local health jurisdictions in the 2001–02 fiscal year.

(2) (A) Except as provided in subdivision (c), after determining the amount allowed for the basic allotment as provided in paragraph (1), the balance of the annual appropriation for purposes of this article, if any, shall be allotted on a per capita basis to the administrative bodies of each local health jurisdiction in the proportion that the population of that local health jurisdiction bears to the population of all eligible local health jurisdictions of the state.

(B) The population estimates used for the calculation of the per capita allotment pursuant to subparagraph (A) shall be based on the Department of Finance's E-1 Report, ''City/County Populations Estimates with Annual Percentage Changes'' as of January 1 of the previous year. However, if within a local health jurisdiction there are one or more city health jurisdictions, the local health jurisdiction shall subtract the population of the city or cities from the local health jurisdiction total population for purposes of calculating the per capita total.

(b) If the amounts appropriated are insufficient to fully fund the allocations specified in subdivision (a), the department shall prorate and adjust each local health jurisdiction's allocation so that the total amount allocated equals the amount appropriated.

(c) For the 2002–03 fiscal year and subsequent fiscal years, where the federally approved collaborative state-local plan identifies an allocation method, other than the basic allotment and per capita method described in subdivision (a), for specific funding to a local public health jurisdiction, including, but not limited to, funding laboratory training, chemical and nuclear terrorism preparedness, smallpox preparedness, and information technology approaches, that funding shall be paid to the administrative bodies of those local health jurisdictions in accordance with the federally approved collaborative state-local plan for bioterrorism preparedness and other public health threats in the state.

(d) Funds appropriated pursuant to the annual Budget Act or some other act for allocation to local health jurisdictions pursuant to this article shall be disbursed quarterly to local health jurisdictions beginning July 1, 2002, using the following process:

(1) Each fiscal year, upon the submission of an application for funding by the administrative body of a local health jurisdiction, the department shall make the first quarterly payment to each eligible local health jurisdiction. Initially, that application shall include a plan and budget for the local program that is in accordance with the department's plans and priorities for bioterrorism preparedness and response, and other public health threats and emergencies, and a certification by the chairperson of the board of supervisors or the mayor of a city with a local health department that the funds received pursuant to this article will not be used to supplant other funding sources in violation of subdivision (d) of Section 101315. In subsequent years, the department shall develop a streamlined process for continuation of funding that will address new federal requirements and will assure the continuity of local plan activities.

(2) The department shall establish procedures and a format for the submission of the local health jurisdiction's plan and budget. The local health jurisdiction's plan shall be consistent with the department's plans and priorities for bioterrorism preparedness and response and other public health threats and emergencies in accordance with requirements specified in the department's federal grant award. Payments to local health jurisdictions beyond the first quarter shall be contingent upon the approval of the department of the local health jurisdiction's plan and the local health jurisdiction's progress in implementing the provisions of the local health jurisdiction's plan, as determined by the department.

(3) If a local health jurisdiction does not apply or submits a noncompliant application for its allocation, those funds provided under this article may be redistributed according to subdivision (a) to the remaining local health jurisdictions.

(e) Funds shall be used for activities to improve and enhance local health jurisdictions' preparedness for and response to bioterrorism and

other public health threats and emergencies, and for any other purposes, as determined by the department, that are consistent with the purposes for which the funds were appropriated.

(f) Any local health jurisdiction that receives funds pursuant to this article shall deposit them in a special local public health preparedness trust fund established solely for this purpose before transferring or expending the funds for any of the uses allowed pursuant to this article. The interest earned on moneys in the fund shall accrue to the benefit of the fund and shall be expended for the same purposes as other moneys in the fund.

(g) (1) A local health jurisdiction that receives funding pursuant to this article shall submit reports that display cost data and the activities funded by moneys deposited in its local public health preparedness trust fund to the department on a regular basis in a form and according to procedures prescribed by the department.

(2) The department, in consultation with local health jurisdictions, shall develop required content for the reports required under paragraph (1), which shall include, but shall not be limited to, data and information needed to implement this article and to satisfy federal reporting requirements. The chairperson of the board of supervisors or the mayor of a city with a local health department shall certify the accuracy of the reports and that the moneys appropriated for the purposes of this article have not been used to supplant other funding sources.

(h) The administrative body of a local health jurisdiction may enter into a contract with the department and the department may enter into a contract with that local health jurisdiction for the department to administer all or a portion of the moneys allocated to the local health jurisdiction pursuant to this article. The department may use funds retained on behalf of a local jurisdiction pursuant to this subdivision solely for the purposes of administering the jurisdiction's bioterrorism preparedness activities. The funds appropriated pursuant to this article and retained by the department pursuant to this subdivision are available for expenditure and encumbrance for the purposes of support or local assistance.

(i) The department may recoup from a local health jurisdiction any moneys allocated pursuant to this article that are unspent or that are not expended for purposes specified in subdivision (d). The department may also recoup funds expended by a local health jurisdiction in violation of subdivision (d) of Section 101315. The department may withhold quarterly payments of moneys to a local health jurisdiction if the local health jurisdiction is not in compliance with this article or the terms of that local health jurisdiction's plan as approved by the department. Before any funds are recouped or withheld from a local health jurisdiction, the department shall meet with local health officials to

discuss the status of the unspent moneys or the disputed use of the funds, or both.

(j) Notwithstanding any other provision of law, moneys made available for bioterrorism preparedness pursuant to this article in the 2001–02 fiscal year shall be available for expenditure and encumbrance until June 30, 2003. Moneys made available for bioterrorism preparedness pursuant to this article from July 1, 2002, to August 30, 2003, inclusive, shall be available for expenditure and encumbrance until August 30, 2004. Moneys made available in the 2003–04 Budget Act for bioterrorism preparedness shall be available for expenditure and encumbrance until August 30, 2005.

SEC. 3. Article 6 (commencing with Section 101315) of Chapter 3 of Part 3 of Division 101 of the Health and Safety Code, as added by Section 8 of Chapter 1161 of the Statutes of 2002, is repealed.

SEC. 4. (a) The sum of eighteen million one hundred forty-five thousand eight hundred eighty-nine dollars ($18,145,889) is hereby appropriated from the Federal Trust Fund to the State Department of Health Services for the purpose of implementing bioterrorism preparedness measures by state and local jurisdictions, for allocation in accordance with the following schedule:

(1) The sum of six million four hundred sixty-two thousand two hundred eighty-seven dollars ($6,462,287) for hospital bioterrorism preparedness purposes. These funds shall be allocated to entities eligible to receive them under the requirements of the federal Health Resources and Services Administration's National Bioterrorism Hospital Preparedness Program Cooperative Agreement Guidance, through the use of agreements that shall not be subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(2) The sum of three million five hundred eighty-one thousand forty-seven dollars ($3,581,047) for purposes of allocating federal bioterrorism and public health preparedness funds to local health jurisdictions, and overseeing the expenditure of those funds, and for implementing state-level provisions of the federally approved collaborative state-local plan, which must be approved by the federal Centers for Disease Control and Prevention and the State Department of Health Services, in accordance with Article 6 (commencing with Section 101315) of Chapter 3 of Part 3 of Division 101 of the Health and Safety Code.

(3) The sum of eight million one hundred two thousand five hundred fifty-five dollars ($8,102,555) for purposes of implementing Article 6 (commencing with Section 101315) of Chapter 3 of Part 3 of Division 101 of the Health and Safety Code. In accordance with the federally approved state-local plan, funds appropriated for purposes of this subdivision shall be available for allocation to local health jurisdictions

for smallpox preparedness costs incurred beginning in the 2002–03 state fiscal year.

(b) Federal funds received by the department from the Centers for Disease Control and Prevention for bioterrorism preparedness and response, that are appropriated to the department for support by the act adding this section or any other provision of law, may be used to contract with public or private entities to meet the federally approved bioterrorism plan. These contracts shall be exempt from the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

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

In order to best enhance California's preparedness for and response to the threat of terrorism, and in order for this act to be applicable during the entire 2003–04 fiscal year, thereby facilitating the orderly administration of state government at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 36

An act to add Chapter 1.6 (commencing with Section 120392) to Part 2 of Division 105 of the Health and Safety Code, relating to immunizations.

[Approved by Governor April 29, 2004. Filed with Secretary of State April 30, 2004.]

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

SECTION 1. Chapter 1.6 (commencing with Section 120392) is added to Part 2 of Division 105 of the Health and Safety Code, to read:

CHAPTER 1.6. INFLUENZA AND PNEUMOCOCCAL IMMUNIZATIONS

120392. For purposes of this chapter, the following definitions apply:

(a) ''Health care facility'' means a skilled nursing facility as defined in subdivision (c) of Section 1250, an intermediate care facility as defined in subdivision (d) of Section 1250, or a nursing facility as defined in subdivision (k) of Section 1250. This chapter shall not apply to hospital-based skilled nursing facilities.

(b) ''Medically contraindicated'' means that the administration of the influenza or pneumococcal vaccines to a person, because of a medical condition of that person, would be detrimental to the person's health if the person receives either or both of the vaccines.

120392.2. (a) Each year, commencing October 1 to the following April 1, inclusive, every health care facility, as defined in subdivision (a) of Section 120392, shall offer, pursuant to Section 120392.4, immunizations for influenza and pneumococcal disease to residents, aged 65 years or older, receiving services at the facility, based upon the latest recommendations of the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention, and the latest recommendations of appropriate entities for the prevention, detection, and control of influenza outbreaks in California long-term care facilities.

(b) Each health care facility, as defined in subdivision (a) of Section 120392, shall offer, pursuant to Section 120392.4, pneumococcal vaccine to all new admittees to the health care facility, based on the latest recommendations of the ACIP.

(c) The facility shall be reimbursed the standard Medi-Cal rate for an immunization provided to a Medi-Cal recipient, unless he or she is also a Medicare recipient whose coverage includes reimbursement for the immunization.

120392.4. (a) A resident who receives services at a health care facility during the period of October 1 to April 1 shall have his or her status for influenza and pneumococcal immunization determined by his or her physician or facility medical director, and, if appropriate, the facility shall offer to make the immunizations available, unless the facility, through written policies and procedures and using standardized nursing procedures, offers to make the immunizations available without limitation as to the period when the residents receive services at the facility.

(b) A health care facility shall obtain from a resident who requests immunization services, or, if the person lacks the capacity to make medical decisions, from the person legally authorized to make medical decisions on the resident's behalf, informed consent for the resident to be immunized by vaccination against influenza or pneumococcal disease, or both, to be conducted by the facility while the resident is receiving services at the facility.

(c) A health care facility shall comply with Section 1418.8 with respect to a resident who lacks the capacity to make health care decisions, and there is no person with legal authority to make these decisions on behalf of the resident.

(d) The health care facility shall document in a resident's medical record whether the resident has been offered the influenza vaccine or the pneumococcal vaccine.

120392.6. No person who has been offered the vaccine as required under this chapter may receive either an influenza vaccine or pneumococcal vaccine pursuant to this chapter if any of the following conditions exists:

(a) The vaccine is medically contraindicated, as described in the product labeling approved by the federal Food and Drug Administration or by the recommendations established by the Advisory Committee on Immunization Practice (ACIP) of the Centers for Disease Control and Prevention that are in effect at the time of vaccination.

(b) Receipt of the vaccine is against the resident's personal beliefs.

(c) Receipt of the vaccine is against the resident's wishes, or, if the person lacks the capacity to make medical decisions, is against the wishes of the person legally authorized to make medical decisions on the resident's behalf.

120392.8. (a) Notwithstanding any other provision of this chapter, a health care facility shall not be required to offer immunizations for influenza and pneumococcal disease under either of the following circumstances:

(1) The facility is unable to obtain the vaccine due to a shortage of the supply of vaccine.

(2) The resident refuses to pay for the vaccine and there is no other funding source available to pay for the cost of the vaccine.

(b) If a health care facility, as defined in subdivision (a) of Section 120392, fails to offer an immunization pursuant to this chapter due to lack of availability of vaccine, a physician's refusal to assess the resident or cooperate with the recommendations of the provisions of this chapter, or lack of resident cooperation, the failure shall not be the basis for issuing a deficiency or citation against the facility's license.

(c) This chapter is intended to encourage immunizations for residents in health care facilities, and the department shall consider a facility's efforts to prevent a violation of this chapter prior to issuing a deficiency or citation. The department may issue a deficiency or citation for failure to comply with Section 120392.4.

CHAPTER 37

An act to amend Sections 10754, 11000, 11001.5 of the Revenue and Taxation Code, relating to local government finance, making an

appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 4, 2004. Filed with Secretary of State May 4, 2004.]

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

SECTION 1. Section 10754 of the Revenue and Taxation Code is amended to read:

10754. (a) Notwithstanding any other provision of law, the total amount of the vehicle license fee otherwise required with respect to a vehicle shall be offset in accordance with those provisions set forth below that are operative pursuant to subdivision (b):

(1) (A) For any initial or original registration of any vehicle, never before registered in this state, for which the final due date for the license fee is on or after January 1 of any calendar year for which this paragraph is operative, and for any renewal of registration with an expiration date on or after January 1 of any calendar year for which this paragraph is operative, the department shall offset the total amount of fees otherwise due at the time of registration of that vehicle by an amount equal to 25 percent of the amount computed pursuant to Section 10752 or 10752.1, or Section 18115 of the Health and Safety Code.

(B) Upon proper payment of license fees to the Department of Motor Vehicles, the amount of the offset for each vehicle shall be transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund, and into the Local Revenue Fund, pursuant to Section 11000 or Section 11000.1, as applicable.

(C) During any period in which insufficient moneys are available to be transferred from the General Fund to fully fund the offsets required by subparagraph (A), within 90 days of a reduction of funding, the department shall reduce the amount of each offset computed pursuant to that subparagraph by multiplying that amount by the ratio of the amount of moneys actually available to be transferred from the General Fund to pay for those offsets to the amount of moneys that is necessary to fully fund those offsets.

(2) (A) For any initial or original registration of any vehicle, never before registered in this state, for which the final due date for the license fee is on or after January 1 of any calendar year for which this paragraph is operative, and for any renewal of registration with an expiration date on or after January 1 of any calendar year for which this paragraph is operative, the department shall offset the total amount of fees otherwise due at the time of registration of that vehicle by an amount equal to 35 percent of the amount computed pursuant to Section 10752 or 10752.1, or Section 18115 of the Health and Safety Code.

(B) Upon proper payment of license fees to the Department of Motor Vehicles, the amount of the offset for each vehicle shall be transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund, and into the Local Revenue Fund, pursuant to Section 11000 or Section 11000.1, as applicable.

(C) During any period in which insufficient moneys are available to be transferred from the General Fund to fully fund the offsets required by subparagraph (A), within 90 days of a reduction of funding, the department shall reduce the amount of each offset computed pursuant to that subparagraph by multiplying that amount by the ratio of the amount of moneys actually available to be transferred from the General Fund to pay for those offsets to the amount of moneys that is necessary to fully fund those offsets.

(3) (A) For any initial or original registration of any vehicle, never before registered in this state, for which the final due date for the license fee is on or after January 1 of any calendar year for which this paragraph is operative, and for any renewal of registration with an expiration date on or after January 1 of any calendar year for which this paragraph is operative, the department shall offset the total amount of fees otherwise due at the time of registration of that vehicle by an amount equal to $67\frac{1}{2}$ percent of the amount computed pursuant to Section 10752 or 10752.1, or Section 18115 of the Health and Safety Code.

(B) Upon proper payment of license fees to the Department of Motor Vehicles, the amount of the offset for each vehicle shall be transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund, and into the Local Revenue Fund, pursuant to Section 11000 or Section 11000.1, as applicable.

(C) During any period in which insufficient moneys are available to be transferred from the General Fund to fully fund the offsets required by subparagraph (A), within 90 days of a reduction in funding, the department shall reduce the amount of each offset computed pursuant to that subparagraph by multiplying that amount by the ratio of the amount of moneys actually available to be transferred from the General Fund to pay for those offsets to the amount of moneys that is necessary to fully fund those offsets.

(D) (i) The Controller shall on August 15, 2006, transfer from the General Fund to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund amounts equal to the total amount of offsets that were applied to new vehicle registrations before October 1, 2003, and that were applied to vehicle license fees with a due date before October 1, 2003, that were not transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund due to the operation of Item 9100-102-0001 of Section 2.00 of the Budget Act of 2003. The amount of this transfer shall include transfers not made for offsets

applied on or after June 20, 2003. The transferred moneys shall be allocated from the Motor Vehicle License Fee Account in the Transportation Tax Fund in the manner as otherwise specified by law for the allocation of moneys from that account. The Controller may make the transfer required by this subparagraph prior to August 15, 2006, if that transfer is authorized by the Legislature.

(ii) The Controller, with the approval of the Department of Finance, may advance from the Motor Vehicle License Fee Account in the Transportation Tax Fund to any county or city that entity's share of the vehicle license fee revenues that are required to be transferred under clause (i), if that entity demonstrates that it will experience a hardship if the advance is not made. For purposes of this clause, those circumstances demonstrating that a county or city will experience a ''hardship,'' include, but are not limited to, the following:

(I) A county or city that has pledged its share of vehicle license fee revenues as security for any indebtedness that, as a result of the delay of the disbursement, will compromise its ability to repay that indebtedness.

(II) A county's or city's share of vehicle license fee revenues, as determined by the Controller, exceeds 37 percent of that entity's general revenue. In the case of a county, the Controller shall make the required calculation of that entity's general revenue based on information derived from the State of California Counties Annual Report for the 2000–01 fiscal year. In the case of a city, the Controller shall make the required calculation based on information derived from the State of California Cities Annual Report for the 2000–01 fiscal year.

(III) A city that is newly incorporated that is entitled to the allocations of vehicle license fee revenues authorized by Section 11005.3.

(iii) The sum of twenty million three hundred sixty-five thousand dollars ($20,365,000) is hereby appropriated from the General Fund to the Motor Vehicle License Fee Account in the Transportation Tax Fund for the purposes of making the advances authorized by clause (ii).

(iv) For purposes of Section 15 of Article XI of the California Constitution, the transfers required to be made by this subparagraph shall constitute successor taxes that are otherwise required to be allocated to counties and cities, and as successor taxes, the obligation to make those transfers as required by this subparagraph may not be extinguished nor disregarded in any manner that adversely affects the security of, or the ability of, a county or city to pay the principal and interest on any debts or obligations that were funded or secured by that city's or county's allocated share of motor vehicle license fee revenues.

(b) The offset provisions set forth in subdivision (a) shall be operative as provided by the following:

(1) Paragraph (1) of subdivision (a) shall be operative for vehicle license fees with a final due date in the calendar year beginning on January 1, 1999.

(2) Paragraph (2) of subdivision (a) shall be operative for vehicle license fees with a final due date on or after January 1, 2000, and before July 1, 2001.

(3) Paragraph (3) of subdivision (a) shall be operative for vehicle license fees with a final due date on or after July 1, 2001.

(c) (1) For purposes of this section, ''department'' means the Department of Motor Vehicles with respect to a vehicle license fee offset for a vehicle subject to registration under the Vehicle Code, and the Department of Housing and Community Development with respect to a vehicle license fee offset for a manufactured home, mobilehome, or commercial coach described in Section 18115 of the Health and Safety Code.

(2) For purposes of this section, the ''final due date'' for a license fee is the last date upon which that fee may be paid without being delinquent.

SEC. 2. Section 11000 of the Revenue and Taxation Code is amended to read:

11000. (a) Beginning on the operative date of Section 9551.2 of the Vehicle Code, the Controller shall do both of the following:

(1) Transfer from the General Fund to the Motor Vehicle License Fee Account in the Transportation Tax Fund an amount equal to 75.67 percent of the amount of offsets that are applied by the department pursuant to Sections 9551.2 and 9554.1 of the Vehicle Code.

(2) (A) Transfer from the General Fund to the Local Revenue Fund, established pursuant to Section 17600 of the Welfare and Institutions Code, an amount equal to 24.33 percent of the amount of offsets that are applied by the department pursuant to Sections 9551.2 and 9554.1 of the Vehicle Code.

(B) (i) Notwithstanding any other provision of law, it is the intent of the Legislature that the total amount transferred by the Controller to the Local Revenue Fund during the 2002–03 fiscal year be an amount equal to the total amount as otherwise required by subparagraph (A) to be transferred into that fund during that same period. The department shall calculate and notify the Controller of the additional amounts that are required by this clause to be transferred to the Local Revenue Fund. The amounts transferred to the Local Revenue Fund pursuant to this clause shall be deemed to have been transferred and allocated during the 2002–03 fiscal year.

(ii) Notwithstanding any other provision of law, it is the intent of the Legislature that the total amount transferred by the Controller to the Local Revenue Fund for the period beginning on and after July 1, 2003, and ending on and including June 30, 2004, be an amount equal to the

total amount that would have been transferred to the Local Revenue Fund during that same period, as otherwise required by subparagraph (A), in the absence of the limitation, pursuant to Item 9100-102-0001 of Section 2.00 of the Budget Act of 2003, of the amount of moneys available to make those reimbursements during that same period. The department shall calculate and notify the Controller of the additional amounts that are required by this clause to be transferred to the Local Revenue Fund. The amounts transferred to the Local Revenue Fund pursuant to this clause shall be deemed to have been transferred and allocated during the 2003–04 fiscal year.

(iii) The additional transfers to the Local Revenue Fund that are required to be made pursuant to clauses (i) and (ii) shall be accomplished by increasing the transfers that are otherwise required to be made from the General Fund to the Local Revenue Fund, pursuant to subparagraph (A), by an amount that is sufficient to meet the transfers required by clauses (i) and (ii), and by decreasing the amount of transfers that are otherwise required to be made from the General Fund to the Motor Vehicle License Fee Account in the Transportation Tax Fund, pursuant to paragraph (1), by an amount equal to the increases in the transfers made from the General Fund to the Local Revenue Fund as required by this clause. It is the intent of the Legislature that this clause is to be administered in a manner that does not have a net impact on the General Fund. An amount equal to any reductions in General Fund transfers to the credit of Motor Vehicle License Fee Account in the Transportation Tax Fund that occur by operation of this clause shall be included in the amount required by clause (i) of subparagraph (D) of paragraph (3) of subdivision (a) of Section 10754 to be repaid to that account on August 15, 2006.

(b) The department shall notify the Controller of the total amount of the offsets applied by the department pursuant to Section 9551.2 of the Vehicle Code concurrently with the department's transfer for deposit of vehicle license fee revenues as required by law.

(c) For purposes of Section 15 of Article XI of the California Constitution, the General Fund revenues that are transferred as required by paragraph (1) of subdivision (a) shall constitute successor tax revenues to the vehicle license fees offset in this part and shall be allocated in the same manner as revenue derived from taxes imposed pursuant to this part.

(d) For purposes of Article 1 (commencing with Section 25350) of Chapter 5 of Part 2 of Division 2 of Title 3 of the Government Code, Section 11003, and Chapter 6 (commencing with Section 17600) of Part 5 of Division 9 of the Welfare and Institutions Code, the General Fund transfer amounts specified in paragraphs (1) and (2) of subdivision (a) are hereby deemed to be vehicle license fee proceeds and vehicle license

fee revenues. These General Fund transfer amounts are subject to the same pledges, liens and encumbrances, and priorities set forth in Section 25350 and following of, Section 53584 and following of, and Section 5450 and following of, the Government Code.

(e) Nothing in this section amends or intends to amend or impair Section 25350 and following of, Section 53584 and following of, the Government Code, or any other statute dealing with the interception of funds.

SEC. 3. Section 11001.5 of the Revenue and Taxation Code is amended to read:

11001.5. (a) (1) Notwithstanding Section 11001, and except as provided in paragraph (2) and in subdivisions (b) and (d), 24.33 percent of the moneys collected by the department under this part shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code. All other moneys collected by the department under this part shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and allocated to each city, county, and city and county as otherwise provided by law.

(2) For the period beginning on and after July 1, 2003, and ending on February 29, 2004, the Controller shall deposit an amount equal to 28.07 percent of the moneys collected by the department under this part in the State Treasury to the credit of the Local Revenue Fund. All other moneys collected by the department under this part shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and allocated to each city, county, and city and county as otherwise provided by law.

(b) Notwithstanding Section 11001, net funds collected as a result of procedures developed for greater compliance with vehicle license fee laws in order to increase the amount of vehicle license fee collections shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Vehicle License Fee Collection Account of the Local Revenue Fund as established pursuant to Section 17600 of the Welfare and Institutions Code. All revenues in excess of fourteen million dollars ($14,000,000) in any fiscal year shall be allocated to cities and counties as specified in subdivisions (c) and (d) of Section 11005.

(c) Notwithstanding Section 11001, 25.72 percent of the moneys collected by the department on or after August 1, 1991, and before August 1, 1992, under this part shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code. All other moneys collected

by the department under this part shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and allocated to each city, county, and city and county as otherwise provided by law.

(d) Notwithstanding any other provision of law, both of the following apply:

(1) This section is operative for the period beginning on and after March 1, 2004, and ending on and including, July 15, 2004.

(2) It is the intent of the Legislature that the total amount deposited by the Controller in the State Treasury to the credit of the Local Revenue Fund for the 2003–04 fiscal year be equal to the total amount that would have been deposited to the credit of the Local Revenue Fund if paragraph (1) of subdivision (a) was applied during that entire fiscal year. The department shall calculate and notify the Controller of the adjustment amounts that are required by this paragraph to be deposited in the State Treasury to the credit of the Local Revenue Fund. The amounts deposited in the State Treasury to the credit of the Local Revenue Fund pursuant to this paragraph shall be deemed to have been deposited during the 2003–04 fiscal year.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to timely guarantee the proper reimbursement of local governments for the revenue losses associated with the application of vehicle license fee offsets and in order to timely guarantee the proper and necessary allocation of moneys derived from the vehicle license fee to local governments, it is necessary that this act take effect immediately.

CHAPTER 38

An act to amend Sections 2805, 106925, 116180, and 116205 of, to add Section 116112 to, and to repeal Section 116215 of, the Health and Safety Code, relating to vectorborne diseases, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 6, 2004. Filed with Secretary of State May 7, 2004.]

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

SECTION 1. Section 2805 of the Health and Safety Code is amended to read:

2805. (a) Except as otherwise provided in subdivision (b), every pest abatement district employee who handles, applies, or supervises the use of any pesticide for public health purposes, shall be certified by the state department as a vector control technician in at least one of the following categories commensurate with assigned duties:

(1) Mosquito control.

(2) Terrestrial invertebrate vector control.

(3) Vertebrate vector control.

(b) The state department may establish by regulation exemptions from the requirements of this section that are deemed reasonably necessary to further the purposes of this section.

(c) The state department shall establish by regulation minimum standards for continuing education for any government agency employee certified under Section 116110 and regulations adopted pursuant thereto, who handles, applies, or supervises the use of any pesticide for public health purposes.

(d) An official record of the completed continuing education units shall be maintained by the state department. If a certified technician fails to meet the requirements set forth under subdivision (c), the state department shall suspend the technician's certificate or certificates and immediately notify the technician and the employing district. The state department shall establish by regulation procedures for reinstating a suspended certificate.

(e) The state department shall charge and collect a nonreturnable renewal fee of twenty-five dollars ($25) to be paid by each continuing education certificant on or before the first day of July, or on any other date that is determined by the state department. Each person employed on September 29, 1996, in a position that requires certification shall first pay the annual fee the first day of the first July following that date. All new certificants shall first pay the annual fee the first day of the first July following their certification.

(f) The state department shall collect and account for all money received pursuant to this section and shall deposit it in the Vectorborne Disease Account provided for in Section 116112. Notwithstanding Section 116112, fees deposited in the Vectorborne Disease Account pursuant to this section shall be available for expenditure, upon appropriation by the Legislature, to implement this section.

(g) Fees collected pursuant to this section shall be subject to the annual fee increase provisions of Section 100425.

SEC. 2. Section 106925 of the Health and Safety Code is amended to read:

106925. (a) Except as otherwise provided in subdivision (b) or (i), every government agency employee who handles, applies, or supervises the use of any pesticide for public health purposes, shall be certified by

the department as a vector control technician in at least one of the following categories commensurate with assigned duties, as follows:

(1) Mosquito control.

(2) Terrestrial invertebrate vector control.

(3) Vertebrate vector control.

(b) The department may establish by regulation exemptions from the requirements of this section that are deemed reasonably necessary to further the purposes of this section.

(c) The department shall establish by regulation minimum standards for continuing education for any government agency employee certified under Section 116110 and regulations adopted pursuant thereto, who handles, applies, or supervises the use of any pesticide for public health purposes.

(d) An official record of the completed continuing education units shall be maintained by the department. If a certified technician fails to meet the requirements set forth under subdivision (c), the department shall suspend the technician's certificate or certificates and immediately notify the technician and the employing agency. The department shall establish by regulation procedures for reinstating a suspended certificate.

(e) The department shall charge and collect a nonreturnable renewal fee of twenty-five dollars ($25) to be paid by each continuing education certificant on or before the first day of July, or on any other date that is determined by the department. Each person employed on September 20, 1988, in a position that requires certification, shall first pay the annual fee the first day of the first July following that date. All new certificants shall first pay the annual fee the first day of the first July following their certification.

(f) The department shall charge and collect nonrefundable examination fees for providing examinations pursuant to this section. When certification is required as a condition of employment, the employing agency shall pay the fees for certified technician applicants. The fees shall not exceed the estimated reasonable cost of providing the examinations, as determined by the director.

(g) The department shall collect and account for all money received pursuant to this section and shall deposit it in the Vectorborne Disease Account provided for in Section 116112. Notwithstanding Section 116112, fees deposited in the Vectorborne Disease Account pursuant to this section shall be available for expenditure, upon appropriation by the Legislature, to implement this section.

(h) Fees collected pursuant to this section shall be subject to the annual fee increase provisions of Section 100425.

(i) Employees of the Department of Food and Agriculture and county agriculture departments holding, or working under the supervision of an

employee holding, a valid Qualified Applicator Certificate in Health Related Pest Control, issued by the licensing and certification program of the Department of Food and Agriculture, shall be exempt from this section.

SEC. 3. Section 116112 is added to the Health and Safety Code, to read:

116112. The Vectorborne Disease Account is hereby established within the State Treasury. When appropriated by the Legislature, the funds deposited in the Vectorborne Disease Account shall be available for expenditure by the department to support activities for the prevention, surveillance, and control of vectorborne diseases and to support other activities that carry out the purposes of this part.

SEC. 4. Section 116180 of the Health and Safety Code is amended to read:

116180. (a) The department may enter into a cooperative agreement with any local district or other public agency engaged in the work of controlling mosquitoes, gnats, flies, other insects, rodents, or other vectors and pests of public health importance, in areas and under terms, conditions, and specifications as the director may prescribe.

(b) The agreement may provide for financial assistance on behalf of the state and for the doing of all or any portion of the necessary work by either of the contracting parties, except that in no event shall the department agree that the state's contribution shall exceed 50 percent of the total cost of any acceptable plan.

(c) The agreement may provide for contributions by the local district or other public agency to the Vectorborne Disease Account.

SEC. 5. Section 116205 of the Health and Safety Code is amended to read:

116205. The department shall collect and account for all money received pursuant to this article and shall deposit it in the Vectorborne Disease Account provided for in Section 116112.

SEC. 6. Section 116215 of the Health and Safety Code is repealed.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Created in 1983, the Mosquitoborne Disease Surveillance Account collected funds to support the State Department of Health Services's vectorborne disease prevention programs. In 2002, the Legislature inadvertently repealed the statutory authorization for the account, although it did not repeal the statutes authorizing the department to spend the money in the account. In order to reauthorize the account at the earliest possible time, so as to address the emerging public health and

safety threats posed by vectorborne diseases, including but not limited to the West Nile virus, it is necessary that this act take effect immediately.

CHAPTER 39

An act relating to state claims, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 6, 2004. Filed with Secretary of State May 7, 2004.]

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

SECTION 1. (a) The sum of one million two hundred three thousand four hundred forty-six dollars and six cents ($1,203,446.06) is hereby appropriated from the various funds, as specified in subdivision (b), to the Executive Officer of the California Victim Compensation and Government Claims Board for the payment of claims accepted by the board in accordance with the schedule set forth in subdivision (b). Those payments shall be made from the funds and accounts identified in that schedule. In the case of Budget Act item schedules identified in the schedule set forth in subdivision (b), those payments shall be made from the funds appropriated in the item schedule.

(b) Pursuant to subdivision (a), claims accepted by the California Victim Compensation and Government Claims Board shall be paid in accordance with the following schedule:

Total for Fund: Compensation Insurance Fund (0512)	$1,390.00
Total for Fund: DMV Local Agency Collection Fund (0877)	$17.00
Total for Fund: Flexelect Benefit Fund (0821)	$416.66
Total for Fund: General Fund (0001)	$370,871.33
Total for Fund: Item 0845–001–0217(1), Budget Act of 2004	$185,208.39
Total for Fund: Item 0850–001–0562, Budget Act of 2004	$500.00
Total for Fund: Item 0860–001–0001(2), Budget Act of 2004	$2,979.03
Total for Fund: Item 0890–001–0001(2), Budget Act of 2004	$2,176.88

Total for Fund: Item 1110–001–0770, Budget Act of 2004	$80.00
Total for Fund: Item 1111–002–0305(1), Budget Act of 2004	$400.75
Total for Fund: Item 1111–002–0421(1), Budget Act of 2004	$14,591.78
Total for Fund: Item 1730–001–0001(1), Budget Act of 2004	$181.77
Total for Fund: Item 1760–001–0666(1), Budget Act of 2004	$6,106.40
Total for Fund: Item 1900–003–0001, Budget Act of 2004	$206.09
Total for Fund: Item 1900–003–0830, Budget Act of 2004	$7,336.00
Total for Fund: Item 2660–001–0042(2), Budget Act of 2004	$7,563.47
Total for Fund: Item 2720–001–0044(1), Budget Act of 2004	$128,580.58
Total for Fund: Item 2740–001–0044(1), Budget Act of 2004	$6,131.37
Total for Fund: Item 3340–001–0001(1), Budget Act of 2004	$13,754.40
Total for Fund: Item 3480–001–0133, Budget Act of 2004, Program 50	$44,692.00
Total for Fund: Item 3540–001–0001(1), Budget Act of 2004	$2,465.00
Total for Fund: Item 3860–001–0001(1), Budget Act of 2004	$27.69
Total for Fund: Item 3940–001–0001(1), Budget Act of 2004	$350.72
Total for Fund: Item 4140–001–0121, Budget Act of 2004, Program 42	$913.20
Total for Fund: Item 4200–001–0001(1), Budget Act of 2004	$2,549.17
Total for Fund: Item 4200–103–0001, Budget Act of 2003	$63,755.45
Total for Fund: Item 4260–001–0001(2), Budget Act of 2004	$13,993.12
Total for Fund: Item 4260–001–0203, Budget Act of 2004, Program 20	$702.21

Total for Fund: Item 4260–001–0306, Budget Act of 2004, Program 10	$35,570.00
Total for Fund: Item 4260–001–0306, Budget Act of 2004, Program 20	$301.78
Total for Fund: Item 4300–003–0001(1), Budget Act of 2004	$3,719.87
Total for Fund: Item 4300–101–0001(2), Budget Act of 2004	$1,937.00
Total for Fund: Item 4440–001–0001(1), Budget Act of 2004	$36.50
Total for Fund: Item 4440–011–0001 (2), Budget Act of 2004	$164.60
Total for Fund: Item 4700–001–0890(1), Budget Act of 2004	$82.23
Total for Fund: Item 5160–001–0001(1), Budget Act of 2004	$1,765.21
Total for Fund: Item 5160–001–0001(4), Budget Act of 2004	$195.00
Total for Fund: Item 5180–001–0001(1), Budget Act of 2004	$23,000.59
Total for Fund: Item 5180–001–0001(2), Budget Act of 2004	$1,146.49
Total for Fund: Item 5180–001–0001(3), Budget Act of 2004	$1,380.00
Total for Fund: Item 5180–001–0001(6), Budget Act of 2004	$3,045.63
Total for Fund: Item 5180–001–0890(3), Budget Act of 2004	$1,394.00
Total for Fund: Item 5180–001–0890(3), Budget Act of 2004, Program 35	$696.34
Total for Fund: Item 5180–111–0001(2), Budget Act of 2004	$1,372.07
Total for Fund: Item 5240–001–0001(1), Budget Act of 2004	$67,774.64
Total for Fund: Item 5240–001–0001(2), Budget Act of 2004	$103,064.00
Total for Fund: Item 5240–001–0001(3), Budget Act of 2004	$154.00
Total for Fund: Item 5460–001–0001(2), Budget Act of 2004, Program 30	$620.60

Total for Fund: Item 6100–001–0001(1), Budget Act of 2004	$128.90
Total for Fund: Item 6610–001–0001(1), Budget Act of 2004	$2,488.48
Total for Fund: Item 7100–001–0185(2), Budget Act of 2004	$26,423.01
Total for Fund: Item 7100–001–0185, Budget Act of 2004	$241.52
Total for Fund: Item 7100–001–0588(2), Budget Act of 2004	$4,566.81
Total for Fund: Item 7100–001–0870(2), Budget Act of 2004	$2,327.39
Total for Fund: Item 7100–101–0871, Budget Act of 2004	$6,477.00
Total for Fund: Item 7350–001–0001(6), Budget Act of 2004	$15,440.74
Total for Fund: Item 8940–001–0001(1), Budget Act of 2004	$1,280.00
Total for Fund: Item 8940–001–0001(2), Budget Act of 2004	$8,633.32
Total for Fund: Public Employees Health Care Fund (0822)	$6,750.94
Total for Fund: Residential Earthquake Recovery Fund 0285)	$68.28
Total for Fund: Subsequent Injuries Benefits Trust Fund (0016)	$1,298.66
Total for Fund: Teachers' Retirement Fund (0835)	$20.00
Total for Fund: Transportation Fund, State Highway Account	$1,668.00
Total for Fund: Unemployment Compensation Disability Fund (0588)	$272.00

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

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

CHAPTER 40

An act to add and repeal Sections 19605.75, 19605.76, 19605.77, and 19605.78 of the Business and Professions Code, relating to horse racing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 13, 2004. Filed with Secretary of State May 13, 2004.]

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

SECTION 1. Section 19605.75 is added to the Business and Professions Code, to read:

19605.75. (a) The Legislature finds and declares that the existence of high caliber thoroughbred racing in California is important to this state's agricultural economy. The California horse racing industry is being threatened by the escalating costs of doing business in California, including, but not limited to, workers' compensation insurance costs, in that these costs are not only causing thoroughbred horses and trainers to leave this state, but are also discouraging owners and trainers from bringing horses into this state to compete. It is the intent of the Legislature to provide some relief from these escalating costs through the redistribution of the parimutuel handle on exotic wagers.

(b) Notwithstanding Section 19610, every thoroughbred association and fair that conducts a racing meet shall deduct an additional 0.5 percent of the total amount handled in exotic parimutuel pools of thoroughbred races.

(c) The funds collected pursuant to subdivision (b) from exotic parimutuel pools on thoroughbred races within the inclosure of a thoroughbred association or fair conducting a race meeting, at satellite wagering facilities within this state, and through advance deposit wagering by residents of this state, shall be distributed to the organization described in subdivision (f) to be used in accordance with subdivision (e).

(d) Any thoroughbred association or fair that authorizes a betting system located outside of this state to accept exotic wagers on its races and to combine those wagers in the association's or fair's exotic parimutuel pools, including, but not limited to, a multijurisdictional wagering hub as to exotic wagers made by residents other than those of

this state, shall deduct the amount specified in subdivision (b) in addition to any other applicable deductions specified in law. The amount deducted pursuant to this subdivision shall be distributed to the organization described in subdivision (f) to be used in accordance with subdivision (e). This additional deduction shall not be included in the amount on which license fees are determined pursuant to Section 19602.

(e) The amounts distributed to the organization described in subdivision (f) shall be deposited by that organization in a separate account to defray the costs of workers' compensation insurance incurred in connection with thoroughbred horses that race in this state at thoroughbred associations and racing fairs through the payment of supplemental premiums that reduce rates, payment to or for the benefit of trainers and owners of such thoroughbreds, based on the number of such thoroughbreds they start, in order to reimburse them for the costs of workers' compensation insurance directly or indirectly incurred by them, and other appropriate payments. Any funds not expended in the calendar year in which they are collected shall be distributed to organizations formed and operated pursuant to Sections 19607 and 19607.2 based upon the total thoroughbred handle in their respective zones in that year, or carried forward to the following year.

(f) The thoroughbred racing associations and the owners' organization described in subdivision (b) of Section 19613 shall form an organization to which funds shall be distributed pursuant to subdivisions (c) and (d). This organization shall have a total of 34 voting interests, of which 16 shall be allocated to the organization representing thoroughbred owners pursuant to Section 19613, one shall be allocated to the official registering agency for thoroughbreds in California, and one shall be allocated to the organization representing thoroughbred trainers pursuant to Section 19613. The remaining 16 votes shall be allocated among the licensed racing associations and racing fairs in the state. Each racing association and fair shall receive the portion of these remaining votes represented by the sum of exotic wagering on its races divided by the statewide total of exotic wagering in the preceding calendar year, excluding Breeders Cup races. Fractional voting shall be permitted. Any decision of this organization with respect to the allocation of funds pursuant to subdivisions (c) and (d) shall require the affirmative vote of 25 of these voting interests. In the event that the required number of affirmative votes cannot be obtained, the matter shall be submitted to the California Horse Racing Board for a decision consistent with subdivision (e), and the decision of the board shall be final.

(g) (1) The organization formed pursuant to this section shall account annually to the California Horse Racing Board with respect to the expenditure and distribution of funds received by the organization

pursuant to subdivisions (c) and (d), and shall obtain an independent audit of fund generation and distribution. A copy of the completed audit shall be forwarded to the California Horse Racing Board within 45 days of its receipt by the organization.

(2) No earlier than 18 months and no later than two years following the effective date of this section, the organization described in subdivision (f) shall commission an independent evaluation of the effectiveness of the distributions under this section along with recommendations for any improvements or modifications regarding the program created in this section. A copy of that evaluation along with a report detailing the organization's response to the evaluation shall be filed with the California Horse Racing Board within 30 days of the receipt of the final evaluation.

(h) Between January 1, 2009 and July 1, 2009, any unexpended funds collected under Section 19605.75 of the Business and Professions Code shall be distributed to organizations formed and operated pursuant to Sections 19607 and 19607.2 based upon the total thoroughbred handle in their respective zones in the year 2008.

(i) Except for subdivision (h), this section shall become inoperative on January 1, 2009, and as of January 1, 2010, this entire section is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 2. Section 19605.76 is added to the Business and Professions Code, to read:

19605.76. (a) Notwithstanding Section 19610, a quarter horse racing association may deduct an additional 0.5 percent of the total amount handled in its exotic parimutuel pools. This additional deduction shall only be permitted with the approval of the organization representing quarter horsemen and horsewomen at the applicable racing association meet.

(b) Any funds collected pursuant to subdivision (a) from exotic parimutuel pools on races within the inclosure of a racetrack, at satellite wagering facilities within this state, and through advance deposit wagering by residents of this state, shall be distributed to the organization described in subdivision (e) to be used in accordance with subdivision (d).

(c) Any quarter horse racing association that authorizes a betting system located outside of this state to accept exotic wagers on its races and to combine those wagers in the association's exotic parimutuel pools, including, but not limited to, a multijurisdictional wagering hub as to exotic wagers made by residents other than those of this state, may deduct the amount specified in subdivision (a) in addition to any other applicable deductions specified in law. Any amount deducted pursuant to this subdivision shall be distributed to the organization described in

subdivision (e) to be used in accordance with the provisions of subdivision (d). This additional deduction shall not be included in the amount on which license fees are determined pursuant to Section 19602.

(d) The amounts distributed to the organization described in subdivision (e) shall be deposited by that organization in a separate account to defray workers' compensation insurance costs for trainers and owners who are racing horses at the applicable quarter horse racing association meet. Any funds not expended for this purpose in the calendar year in which they are collected may either be used for the following year's workers' compensation costs, as specified above, or to benefit the purse pools at the track where the funds are generated. Funds to benefit purse pools shall be allocated by breed, in the same proportions as each breed generated in deductions under this section at the track in the year the funds were collected.

(e) The quarter horse racing association and the organization representing quarter horsemen and horsewomen shall form an organization to which any funds deducted pursuant to subdivisions (b) and (c) shall be distributed. The quarter horse associations collectively shall have representation equal to that of the organization representing quarter horsemen and horsewomen on the governing board of the organization formed pursuant to this subdivision.

(f) If the quarter horse racing association and the organization representing quarter horsemen and horsewomen cannot agree on the manner for distributing these funds to defray the costs of workers' compensation insurance, the matter shall be submitted to the California Horse Racing Board for a decision consistent with subdivision (d), and the decision of the board shall be final.

(g) 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.

SEC. 3. Section 19605.77 is added to the Business and Professions Code, to read:

19605.77. (a) Notwithstanding Section 19610, a harness racing association may deduct an additional 1 percent of the total amount handled in conventional parimutuel pools of harness races. This additional deduction shall only be permitted with the approval of the organization representing harness horsemen and horsewomen at the applicable racing association meeting.

(b) Any funds collected pursuant to subdivision (a) from conventional parimutuel pools on harness races within the inclosure of a racetrack, at satellite wagering facilities within this state, and through advance deposit wagering by residents of this state, shall be distributed to the organization described in subdivision (e) to be used in accordance with subdivision (d).

(c) Any harness racing association that authorizes a betting system located outside of this state to accept conventional wagers on its races and to combine those wagers in the association's conventional parimutuel pools, including, but not limited to, a multijurisdictional wagering hub as to conventional wagers made by residents other than those of this state, may deduct the amount specified in subdivision (a) in addition to any other applicable deductions specified in law. Any amount deducted pursuant to this subdivision shall be distributed to the organization described in subdivision (e) to be used in accordance with the provisions of subdivision (d). This additional deduction shall not be included in the amount on which license fees are determined pursuant to Section 19602.

(d) The amounts distributed to the organization described in subdivision (e) shall be deposited by that organization in a separate account and used to reduce the workers' compensation insurance costs for trainers who are racing horses at the applicable harness racing association meet. Any funds not expended for this purpose in the calendar year in which they are collected may either be used for the following year's workers' compensation costs, as specified above, or to benefit the harness purse pool at the track where the funds are generated.

(e) The harness racing association and the organization representing harness horsemen and horsewomen shall form an organization to which any funds deducted pursuant to subdivisions (b) and (c) shall be distributed. The harness associations collectively shall have representation equal to that of the organization representing harness horsemen and horsewomen on the governing board of the organization formed pursuant to this subdivision.

(f) If the harness horse racing association and the organization representing harness horsemen and horsewomen cannot agree on the manner for distributing these funds to defray the costs of workers' compensation insurance, the matter shall be submitted to the California Horse Racing Board for a decision consistent with subdivision (d), and the decision of the board shall be final.

(g) 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.

SEC. 4. Section 19605.78 is added to the Business and Professions Code, to read:

19605.78. (a) Notwithstanding Section 19610 and in addition to the deduction specified in subdivision (b) of Section 19605.75, a fair may deduct an additional 0.5 percent of the total amount handled in exotic parimutuel pools of races for any breed, other than races solely for thoroughbreds. This additional deduction shall only be permitted for a

breed's races with the approval of the organization representing the horsemen and horsewomen of that breed at the fair.

(b) Any funds collected pursuant to subdivision (a) from exotic parimutuel pools on races within the inclosure of a racetrack, at satellite wagering facilities within this state, and through advance deposit wagering by residents of this state, shall be distributed to the organization described in subdivision (e) to be used in accordance with subdivision (d).

(c) Any fair that authorizes a betting system located outside of this state to accept exotic wagers on its races and to combine those wagers in the association's exotic parimutuel pools, including, but not limited to, a multijurisdictional wagering hub as to exotic wagers made by residents other than those of this state, may deduct the amount specified in subdivision (a) in addition to any other applicable deductions specified in law. Any amount deducted pursuant to this subdivision shall be distributed to the organization described in subdivision (e) to be used in accordance with the provisions of subdivision (d). This additional deduction shall not be included in the amount on which license fees are determined pursuant to Section 19602.

(d) The amounts distributed to the organization described in subdivision (e) shall be deposited by that organization in a separate account to defray workers' compensation insurance costs for trainers and owners who are racing breeds other than thoroughbreds at the applicable fair. Any funds not expended for this purpose in the calendar year in which they are collected may either be used for the following year's workers' compensation costs, as specified above, or to benefit the purse pool of each breed at the particular fair where the funds are generated in the same proportions as each breed generated at that fair in the year the funds are collected.

(e) The fairs and the organizations representing the horsemen and horsewomen of each breed for which deductions have been approved under subdivision (a) shall form an organization to which any funds deducted pursuant to subdivisions (b) and (c) shall be distributed. The fairs collectively shall have representation equal to the collective representation of the organizations representing horsemen and horsewomen on the governing board of the organization formed pursuant to this subdivision.

(f) If the fairs and the organizations representing horsemen and horsewomen cannot agree on the manner for distributing these funds to defray the costs of workers' compensation insurance, the matter shall be submitted to the California Horse Racing Board for a decision consistent with subdivision (d), and the decision of the board shall be final.

(g) 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.

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

To protect the California horse racing industry, which is already suffering from significant displacement due to extreme increases in workers' compensation costs, it is necessary that this bill take immediate effect.

CHAPTER 41

An act to add and repeal Section 116183 of the Health and Safety Code, relating to the public health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 13, 2004. Filed with Secretary of State May 14, 2004.]

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

SECTION 1. Section 116183 is added to the Health and Safety Code, to read:

116183. (a) The Legislature finds and declares that cooperative agreements between the State Department of Health Services and local vector control districts help to ensure that all state and federal requirements regarding the use of pesticides are met and provide participating agencies with the flexibility to perform their legally mandated role to control mosquito and other public health vectors.

(b) To ensure public health and safety, any state or local agency responding to an outbreak of West Nile virus or other mosquito-borne disease with an abatement and surveillance program shall, and any federal agency so responding is encouraged to, contract with a local mosquito and vector control agency that is party to a cooperative agreement with the State Department of Health Services or shall consult directly with the State Department of Health Services to ensure that outbreak response is supervised appropriately and conducted by licensed personnel using sound integrated mosquito management techniques.

(c) For the purposes of this section ''outbreak'' means the occurrence of cases of a disease or illness above the expected or baseline level, usually over a given period of time, in a geographic area or facility, or

in a specific population group. The number of cases indicating the presence of an outbreak will vary according to the disease agent, size and type of population exposed, previous exposure to the agent, and the time and place of exposure.

(d) 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.

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

In order to protect the public health and safety from the damaging effects of the West Nile virus and other mosquito-borne diseases, it is necessary that this act take effect immediately.

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 42

An act to amend Sections 65460.1, 65460.2, and 65460.4 of the Government Code, relating to transit village plans.

[Approved by Governor May 19, 2004. Filed with Secretary of State May 20, 2004.]

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

SECTION 1. Section 65460.1 of the Government Code is amended to read:

65460.1. (a) The Legislature hereby finds and declares all of the following:

(1) Federal, state, and local governments in California are investing in new and expanded rail transit systems in areas throughout the state, including Los Angeles County, the San Francisco Bay area, San Diego County, Santa Clara County, and Sacramento County.

(2) This public investment in rail transit is unrivaled in the state's history and represents well over ten billion dollars ($10,000,000,000) in planned investment alone.

(3) Recent studies of transit ridership in California indicate that persons who live within a quarter-mile radius of rail transit stations utilize the transit system in far greater numbers than does the general public living elsewhere.

(4) The use of transit by persons living near rail transit stations is particularly important given the decline of transit ridership in California between 1980 and 1990. Transit's share of commute trips dropped in all California metropolitan areas—greater Los Angeles: 5.4 percent to 4.8 percent; San Francisco Bay area: 11.9 percent to 10.0 percent; San Diego: 3.7 percent to 3.6 percent; Sacramento: 3.7 percent to 2.5 percent.

(5) Only a few rail transit stations in California have any concentration of housing proximate to the station.

(6) Interest in clustering housing and commercial development around rail transit stations, called transit villages, has gained momentum in recent years.

(b) For purposes of this article, the following definitions shall apply:

(1) ''Bus hub'' means an intersection of three or more bus routes, with a minimum route headway of 10 minutes during peak hours.

(2) ''District'' means a transit village development district as defined in Section 65460.4.

(3) ''Peak hours'' means the time between 7 a.m. to 10 a.m., inclusive, and 3 p.m. to 7 p.m., inclusive, Monday through Friday.

(4) ''Transit station'' means a rail or light-rail station, ferry terminal, bus hub, or bus transfer station.

SEC. 2. Section 65460.2 of the Government Code is amended to read:

65460.2. A city or county may prepare a transit village plan for a transit village development district that addresses the following characteristics:

(a) A neighborhood centered around a transit station that is planned and designed so that residents, workers, shoppers, and others find it convenient and attractive to patronize transit.

(b) A mix of housing types, including apartments, within not more than a quarter mile of the exterior boundary of the parcel on which the transit station is located.

(c) Other land uses, including a retail district oriented to the transit station and civic uses, including day care centers and libraries.

(d) Pedestrian and bicycle access to the transit station, with attractively designed and landscaped pathways.

(e) A transit system that should encourage and facilitate intermodal service, and access by modes other than single occupant vehicles.

(f) Demonstrable public benefits beyond the increase in transit usage, including any five of the following:

(1) Relief of traffic congestion.

(2) Improved air quality.

(3) Increased transit revenue yields.

(4) Increased stock of affordable housing.

(5) Redevelopment of depressed and marginal inner-city neighborhoods.

(6) Live-travel options for transit-needy groups.

(7) Promotion of infill development and preservation of natural resources.

(8) Promotion of a safe, attractive, pedestrian-friendly environment around transit stations.

(9) Reduction of the need for additional travel by providing for the sale of goods and services at transit stations.

(10) Promotion of job opportunities.

(11) Improved cost-effectiveness through the use of the existing infrastructure.

(12) Increased sales and property tax revenue.

(13) Reduction in energy consumption.

(g) Sites where a density bonus of at least 25 percent may be granted pursuant to specified performance standards.

(h) Other provisions that may be necessary, based on the report prepared pursuant to subdivision (b) of former Section 14045, as enacted by Section 3 of Chapter 1304 of the Statutes of 1990.

SEC. 3. Section 65460.4 of the Government Code is amended to read:

65460.4. A transit village development district shall include all land within not more than a quarter mile of the exterior boundary of the parcel on which is located a transit station designated by the legislative body of a city, county, or city and county that has jurisdiction over the station area.

CHAPTER 43

An act to make an appropriation in augmentation of the Budget Act of 2003, relating to contingencies or emergencies, to take effect immediately as an appropriation for the usual current expenses of the state.

[Approved by Governor May 26, 2004. Filed with Secretary of State May 26, 2004.]

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

SECTION 1. The sum of one hundred three million two hundred sixty-six thousand dollars ($103,266,000) is hereby appropriated for expenditure for the 2003–04 fiscal year in augmentation and for the purposes of Contingencies or Emergencies as provided in Items 9840-001-0001, 9840-001-0494, 9840-001-0988, and 9840-011-0001 of Section 2.00 of the Budget Act of 2003 (Chapter 157 of the Statutes of 2003), in accordance with the following schedule:

(a) One hundred million eight hundred sixty-four thousand dollars ($100,864,000) from the General Fund to the Augmentation for Contingencies or Emergencies in Item 9840-001-0001.

(b) Two million four hundred two thousand dollars ($2,402,000) from unallocated special funds to the Augmentation for Contingencies or Emergencies in Item 9840-001-0494.

(c) One million dollars ($1,000,000) from the General Fund to the Reserve for Contingencies or Emergencies (Loans) in Item 9840-011-0001.

SEC. 2. Notwithstanding Provision 1 of Item 4260-490 of Section 2.00 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001), or any other provision of law, one hundred seven million eight hundred ninety-eight thousand eight hundred eighty-one dollars ($107,898,881) from the appropriation provided in Item 4260-101-0001 of Section 2.00 of the Budget Act of 2000 (Chapter 52 of the Statutes of 2000) is reappropriated for any Medical Assistance Program local assistance expenditures resulting in a deficiency in the 2003–04 fiscal year. This funding is available on a one-time basis only. These funds will revert on June 30, 2004. Upon approval of the Department of Finance, the Department of Health Services may request authorization to expend these funds for other Medical Assistance Program local assistance expenditures for the 2003–04 fiscal year upon 30-day notification in writing to the chairperson of the fiscal committee of each house of the Legislature and the Chairperson of the Joint Legislative Budget Committee.

SEC. 3. The Director of Finance may withhold authorization for the expenditure of funds provided in this act until such time as, and to the extent that, preliminary estimates of potential deficiencies are verified.

SEC. 4. This act makes an appropriation for the usual current expenses of the state within the meaning of subdivision (c) of Section 8 of Article IV of the California Constitution and shall go into immediate effect.

———

CHAPTER 44

An act to add Items 0690-490 and 0690-491 to Section 2.00 of the Budget Act of 2003 (Chapter 157 of the Statutes of 2003), relating to the support of state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 27, 2004. Filed with Secretary of State May 28, 2004.]

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

SECTION 1. Item 0690-490 is added to Section 2.00 of the Budget Act of 2003 (Chapter 157 of the Statutes of 2003), to read:

0690–490—Reappropriation, Office of Emergency Services. Pursuant to Section 25.00 of the Budget Act of 2003 (Ch. 157, Stats. 2003) and Chapter 229 of the Statutes of 2003, the Office of Criminal Justice Planning was abolished effective January 1, 2004, and the Office of Emergency Services assumed many transferred activities. Therefore, the balance of the appropriation provided in the following citations is reappropriated for the purposes provided for in that appropriation, except for the purpose provided for in Provision 1, and shall be available for encumbrance and expenditure until June 30, 2005:

0001—General Fund

(1) Item 8100–101–0001, Budget Act of 2001 (Ch. 106, Stats. 2001)

(2) Item 8100–101–0001, Budget Act of 2002 (Ch. 379, Stats. 2002)

0268—Peace Officers' Training Fund

(1) Item 8100–101–0268, Budget Act of 2001 (Ch. 106, Stats. 2001)

0425—Victim–Witness Assistance Fund

(1) Item 8100–101–0425, Budget Act of 2001 (Ch. 106, Stats. 2001)

(2) Item 8100–101–0425, Budget Act of 2002 (Ch. 379, Stats. 2002)

0597—High Technology Theft Apprehension and Prosecution Program Trust Fund

(1) Item 8100–101–0597, Budget Act of 2001 (Ch. 106, Stats. 2001)
(2) Item 8100–101–0597, Budget Act of 2002 (Ch. 379, Stats. 2002)

Provisions:

1. $1,130,000 of the balance reappropriated in Schedule (2) of Item 8100–101–0001 of the Budget Act of 2002 is hereby reappropriated to the Office of Emergency Services for transfer to and in augmentation of Item 0690–001–0001 of the Budget Act of 2003 (Ch. 157, Stats. 2003) for the purpose of performing accounting workload associated with grant activities. As a result of this accounting work and grant review process, the Office of Emergency Services shall complete or contract to complete a report as to the results of the project and shall distribute that report to the Joint Legislative Budget Committee by October 1, 2004.

SEC. 2. Item 0690-491 is added to Section 2.00 of the Budget Act of 2003 (Chapter 157 of the Statutes of 2003), to read:

0690–491—Reappropriation, Office of Emergency Services.

Pursuant to Section 25.00 of the Budget Act of 2003 (Ch. 157, Stats. 2003) and Chapter 229 of the Statutes of 2003, the Office of Criminal Justice Planning was abolished effective January 1, 2004, and the Office of Emergency Services assumed many transferred activities. Therefore, notwithstanding any other provision of law, the period to liquidate encumbrances of the following citations is extended to June 30, 2005:

0001—General Fund

(1) Item 8100–101–0001, Budget Act of 2000 (Ch. 52, Stats. 2000)

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:

This act provides necessary funding for current operations of state government. It is necessary, therefore, that this act take immediate effect.

CHAPTER 45

An act to repeal and add Section 2024.5 of, and to add Section 2024.6 to, the Family Code, relating to court records, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 7, 2004. Filed with Secretary of State June 7, 2004.]

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

SECTION 1. Section 2024.5 of the Family Code is repealed.

SEC. 2. Section 2024.5 is added to the Family Code, to read:

2024.5. (a) Except as provided in subdivision (b), the petitioner or respondent may redact any social security number from any pleading, attachment, document, or other written material filed with the court pursuant to a petition for dissolution of marriage, nullity of marriage, or legal separation. The Judicial Council form used to file such a petition, or a response to such a petition, shall contain a notice that the parties may redact any social security numbers from those pleadings, attachments, documents, or other material filed with the court.

(b) An abstract of support judgment, the form required pursuant to subdivision (b) of Section 4014, or any similar form created for the purpose of collecting child or spousal support payments may not be redacted pursuant to subdivision (a).

SEC. 3. Section 2024.6 is added to the Family Code, to read:

2024.6. (a) Upon request by a party to a petition for dissolution of marriage, nullity of marriage, or legal separation, the court shall order a pleading that lists the parties' financial assets and liabilities and provides the location or identifying information about those assets and liabilities sealed. The request may be made by ex parte application. Nothing sealed pursuant to this section may be unsealed except upon petition to the court and good cause shown.

(b) Commencing not later than July 1, 2005, the Judicial Council form used to declare assets and liabilities of the parties in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties shall require the party filing the form to state whether the declaration contains identifying information on the assets and liabilities listed therein. If the party making the request uses a pleading other than the Judicial Council form, the pleading shall exhibit a notice on the front page, in bold capital letters, that the pleading lists and identifies financial information and is therefore subject to this section.

(c) For purposes of this section, ''pleading'' means a document that sets forth or declares the parties' assets and liabilities, income and expenses, a marital settlement agreement that lists and identifies the

parties' assets and liabilities, or any document filed with the court incidental to the declaration or agreement that lists and identifies financial information.

(e) The party making the request to seal a pleading pursuant to subdivision (a) shall serve a copy of the pleading on the other party to the proceeding and file a proof of service with the request to seal the pleading.

(f) Nothing in this section precludes a party to a proceeding described in this section from using any document or information contained in a sealed pleading in any manner that is not otherwise prohibited by law.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

It is necessary that this act take effect immediately as an urgency statute because the records that this act seeks to protect may disclose identifying information and location of assets and liabilities, thereby subjecting the affected parties and their children, as well as their assets and liabilities, to criminal activity, violations of privacy, and other potential harm.

CHAPTER 46

An act to amend Sections 955.1 and 3440.1 of the Civil Code, to amend Section 9109 of the Commercial Code, and to amend Section 1731 of, to add and repeal Section 1769 of, and to add Article 5.6 (commencing with Section 848) to Chapter 4 of Part 1 of Division 1 of, the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 7, 2004. Filed with Secretary of State June 7, 2004.]

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

SECTION 1. In confirming the Public Utilities Commission's authority to approve a dedicated rate component to support the issuance of recovery bonds, the Legislature is not ratifying or endorsing any particular outcome of the Pacific Gas and Electric Company's federal bankruptcy proceeding, but rather is authorizing a means by which the commission can reduce ratepayer costs in a plan of reorganization.

SEC. 2. Section 955.1 of the Civil Code is amended to read:

955.1. (a) Except as provided in Sections 954.5 and 955 and subject to subdivisions (b) and (c), a transfer other than one intended to create a security interest (paragraph (1) or (3) of subdivision (a) of Section 9109 of the Commercial Code) of any payment intangible (Section 9102 of the Commercial Code) and any transfer of accounts, chattel paper, payment intangibles, or promissory notes excluded from the coverage of Division 9 of the Commercial Code by paragraph (4) of subdivision (d) of Section 9109 of the Commercial Code shall be deemed perfected as against third persons upon there being executed and delivered to the transferee an assignment thereof in writing.

(b) As between bona fide assignees of the same right for value without notice, the assignee first giving notice thereof to the obligor in writing has priority.

(c) The assignment is not, of itself, notice to the obligor so as to invalidate any payments made by the obligor to the transferor.

(d) This section does not apply to transfers or assignments of transition property, as defined in Section 840 of the Public Utilities Code, or to transfers or assignments of recovery property, as defined in Section 848 of the Public Utilities Code.

SEC. 3. Section 3440.1 of the Civil Code is amended to read:

3440.1. This chapter does not apply to any of the following:

(a) Things in action.

(b) Ships or cargoes if either are at sea or in a foreign port.

(c) The sale of accounts, chattel paper, payment intangibles, or promissory notes governed by the Uniform Commercial Code, security interests, and contracts of bottomry or respondentia.

(d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers or owners of the wines or brandies, or other persons having possession, care, and control of the wines or brandies, and the pipes, casks, and tanks in which the wines or brandies are contained, if the transfers are made in writing and executed and acknowledged, and if the transfers are recorded in the book of official records in the office of the county recorder of the county in which the wines, brandies, pipes, casks, and tanks are situated.

(e) A transfer or assignment made for the benefit of creditors generally or by any assignee acting under an assignment for the benefit of creditors generally.

(f) Property exempt from enforcement of a money judgment.

(g) Standing timber.

(h) Subject to the limitations in Section 3440.3, a transfer of personal property if all of the following conditions are satisfied:

(1) Prior to the date of the intended transfer, the transferor or the transferee files a financing statement, with respect to the property transferred, signed by the transferor. The financing statement shall be

filed in the office of the Secretary of State in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, but may use the terms ''transferor'' in lieu of ''debtor'' and ''transferee'' in lieu of ''secured party.'' The provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code shall apply as appropriate to the financing statement.

(2) The transferor or the transferee publishes a notice of the intended transfer one time in a newspaper of general circulation published in the judicial district in which the personal property is located, if there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing the judicial district. The publication shall be completed not less than 10 days before the date the transfer occurs. The notice shall contain the name and address of the transferor and transferee and a general statement of the character of the personal property intended to be transferred, and shall indicate the place where the personal property is located and a date on or after which the transfer is to be made.

(i) Personal property not located within this state at the time of the transfer or attachment of the lien if the provisions of this subdivision are not used for the purpose of evading this chapter.

(j) A transfer of property which (1) is subject to a statute or treaty of the United States or a statute of this state that provides for the registration of transfers of title or issuance of certificates of title and (2) is so far perfected under that statute or treaty that a bona fide purchaser cannot acquire an interest in the property transferred that is superior to the interest of the transferee.

(k) A transfer of personal property in connection with a transaction in which the property is immediately thereafter leased by the transferor from the transferee provided the transferee purchased the property for value and in good faith (subdivision (c) of Section 10308 of the Commercial Code).

(*l*) Transition property, as defined in Section 840 of the Public Utilities Code, or recovery property, as defined in Section 848 of the Public Utilities Code.

SEC. 4. Section 9109 of the Commercial Code is amended to read:

9109. (a) Except as otherwise provided in subdivisions (c) and (d), this division applies to each of the following:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract.

(2) An agricultural lien.

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes.

(4) A consignment.

(5) A security interest arising under Section 2401 or 2505, or under subdivision (3) of Section 2711, or subdivision (5) of Section 10508, as provided in Section 9110.

(6) A security interest arising under Section 4210 or 5118.

(b) The application of this division to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this division does not apply.

(c) This division does not apply to the extent that either of the following conditions is satisfied:

(1) A statute, regulation, or treaty of the United States preempts this division.

(2) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 5114.

(d) This division does not apply to any of the following:

(1) A landlord's lien, other than an agricultural lien.

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9333 applies with respect to priority of the lien.

(3) An assignment of a claim for wages, salary, or other compensation of an employee.

(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose.

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only.

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract.

(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness.

(8) Any loan made by an insurance company pursuant to the provisions of a policy or contract issued by it and upon the sole security of the policy or contract.

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral.

(10) A right of recoupment or setoff, provided that both of the following sections apply:

(A) Section 9340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts.

(B) Section 9404 applies with respect to defenses or claims of an account debtor.

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for each of the following:

(A) Liens on real property in Sections 9203 and 9308.

(B) Fixtures in Section 9334.

(C) Fixture filings in Sections 9501, 9502, 9512, 9516, and 9519.

(D) Security agreements covering personal and real property in Section 9604.

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(13) An assignment of a deposit account in a consumer transaction, but Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(14) Any security interest created by the assignment of the benefits of any public construction contract under the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(15) Transition property, as defined in Section 840 of the Public Utilities Code, except to the extent that the provisions of this division are referred to in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, and recovery property, as defined in Section 848 of the Public Utilities Code, except to the extent that the provisions of this division are referred to in Article 5.6 (commencing with Section 848) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(16) A claim or right of an employee or employee's dependents to receive workers' compensation under Division 1 (commencing with Section 50) or Division 4 (commencing with Section 3200) of the Labor Code.

(17) A transfer by a government or governmental unit.

SEC. 5. Article 5.6 (commencing with Section 848) is added to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 5.6. Financing Utility Recovery

848. For the purposes of this article, the following terms shall have the following meanings:

(a) ''Consumer'' means any individual, governmental body, trust, business entity or nonprofit organization which consumes electricity that has been transmitted or distributed by means of electric transmission or distribution facilities, whether those electric transmission or distribution facilities are owned by the consumer, the recovery corporation, or any other party.

(b) ''Financing entity'' means the recovery corporation or any subsidiary or affiliate of the recovery corporation that is authorized by the commission to issue recovery bonds or acquire recovery property, or both.

(c) ''Financing order'' means an order of the commission adopted in accordance with this article, which shall include, without limitation, a procedure to require the expeditious approval by the commission of periodic adjustments to fixed recovery amounts and to any associated fixed recovery tax amounts included in that financing order to ensure recovery of all recovery costs and the costs associated with the proposed recovery, financing, or refinancing thereof, including the costs of servicing and retiring the recovery bonds contemplated by the financing order.

(d) ''Fixed recovery amounts'' means those nonbypassable rates and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are authorized by the commission in a financing order to recover (1) recovery costs specified in the financing order, and (2) the costs of recovering, financing, or refinancing those recovery costs through a plan approved by the commission in the financing order, including the costs of servicing and retiring recovery bonds.

(e) ''Fixed recovery tax amounts'' means those nonbypassable rates and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are needed to recover federal and State of California income and franchise taxes associated with fixed recovery amounts authorized by the commission in the financing order and that are not financed from proceeds of recovery bonds.

(f) ''Local publicly owned electric utility'' means a local publicly owned electric utility as defined in Section 9604.

(g) ''Recovery bonds'' means bonds, notes, certificates of participation or beneficial interest, or other evidences of indebtedness or ownership, issued pursuant to an executed indenture or other agreement of a financing entity, the proceeds of which are used, directly or indirectly, to recover, finance, or refinance recovery costs, and that are directly or indirectly secured by, or payable from, recovery property.

(h) ''Recovery corporation'' means Pacific Gas and Electric Company, the electrical corporation described in the commission's Decision No. 03-12-035.

(i) ''Recovery costs'' means (1) the unamortized balance of the regulatory asset arising and existing pursuant to the commission's Decision No. 03-12-035, (2) federal and State of California income and franchise taxes associated with recovery of the unamortized balance of that regulatory asset, (3) costs of issuing recovery bonds, and (4) professional fees, consultant fees, redemption premiums, tender premiums and other costs incurred by the recovery corporation in using proceeds of recovery bonds to acquire outstanding securities of the recovery corporation.

(j) (1) ''Recovery property'' means the property right created pursuant to this article, including, without limitation, the right, title, and interest of the recovery corporation or its transferee:

(A) In and to the tariff established pursuant to a financing order, as adjusted from time to time in accordance with Section 848.1 and the financing order.

(B) To be paid the amount that is determined in a financing order to be the amount that the recovery corporation or its transferee is lawfully entitled to receive pursuant to the provisions of this article and the proceeds thereof, and in and to all revenues, collections, claims, payments, money, or proceeds of or arising from the tariff or constituting fixed recovery amounts that are the subject of a financing order including those nonbypassable rates and other charges referred to in subdivision (d).

(C) In and to all rights to obtain adjustments to the tariff relating to fixed recovery amounts pursuant to the terms of Section 848.1 and the financing order.

(2) ''Recovery property'' shall not include the right to be paid fixed recovery tax amounts.

(3) ''Recovery property'' shall constitute a current property right notwithstanding the fact that the value of the property right will depend on consumers using electricity or, in those instances where consumers are customers of the recovery corporation, the recovery corporation performing certain services.

(k) ''Service territory'' means the geographical area that the recovery corporation provided with electric distribution service as of December 19, 2003.

848.1. (a) No later than 120 days after the effective date of this article, and from time to time thereafter, the recovery corporation shall apply to the commission for a determination that some or all of the recovery corporation's recovery costs may be recovered through fixed recovery amounts, which would be recovery property under this article, and that any portion of the recovery corporation's federal and State of California income and franchise taxes associated with those fixed recovery amounts and not financed from proceeds of recovery bonds be recovered through fixed recovery tax amounts. The recovery corporation may request this determination by the commission in a separate proceeding or in an existing proceeding, or both. The recovery corporation shall in its application specify that consumers within its service territory would benefit from reduced rates on a present value basis through the issuance of recovery bonds. The commission shall designate fixed recovery amounts and any associated fixed recovery tax amounts as recoverable in one or more financing orders if the commission determines, as part of its findings in connection with the

financing order, that the designation of the fixed recovery amounts and any associated fixed recovery tax amounts, and the issuance of recovery bonds in connection with fixed recovery amounts, would reduce the rates on a present value basis that consumers within the recovery corporation's service territory would pay if the financing order were not adopted. Fixed recovery amounts and any associated fixed recovery tax amounts shall only be imposed on existing and future consumers in the service territory. Consumers within the service territory shall continue to pay fixed recovery amounts and any associated fixed tax recovery amounts until the recovery bonds are paid in full by the financing entity. Once the recovery bonds have been paid in full, the payment by consumers of fixed recovery amounts and fixed recovery tax amounts shall terminate.

(b) The commission shall establish an effective mechanism that ensures recovery of recovery costs through fixed recovery amounts and any associated fixed recovery tax amounts from existing and future consumers in the service territory, provided that the costs shall not be recoverable from any of the following:

(1) New load or incremental load of an existing consumer of the recovery corporation where the load is being met through a direct transaction and the transaction does not require the use of transmission or distribution facilities owned by the recovery corporation.

(2) Customer Generation departing load that is exempt from Department of Water Resources power charges pursuant to the commission's Decision No. 03-04-030, as modified by Decision No. 03-04-041, and as clarified and affirmed by Decision No. 03-05-039, except that the load shall pay the costs as a component of and in proportion to any purchase of electricity delivered by the recovery corporation under standby or other service made following its departure.

(3) The Department of Water Resources, with respect to the pumping, generation, and transmission facilities and operations of the State Water Resources Development System, except to the extent that system facilities receive electric service from the recovery corporation on or after December 19, 2003, under a commission approved tariff.

(4) Retail electric load, continuously served by a local publicly owned electric utility from January 1, 2000, through the effective date of the act adding this section.

(5) Load that thereafter comes to take electric service from a city where all the following conditions are met:

(A) The new load is from locations that never received electric service from the recovery corporation.

(B) The city owns and operates the local publicly owned electric utility.

(C) The local publicly owned electric utility served more than 95 percent of the customers receiving electric service residing within the city limits prior to December 19, 2003.

(D) The city annexed the territory in which the load is located on or after December 19, 2003.

(E) Following annexation, the city provides all municipal services to the annexed territory that the city provides to other territory within the city limits, including electric service.

(F) The total load exempt from paying fixed recovery amounts and associated fixed recovery tax amounts pursuant to subparagraphs (A) through (D), inclusive, does not exceed 50 megawatts, as determined by the commission, and any load above the 50 megawatt exemption amount shall be responsible for paying recovery amounts and associated fixed recovery tax amounts, except as provided in subdivision (c).

(c) Except as provided in paragraphs (4) and (5) of subdivision (b), the commission shall determine the extent to which fixed recovery amounts and any associated fixed recovery tax amounts are recoverable from new municipal load, consistent with the commission's determination in the limited rehearing granted in Decision 03-08-076. The determination of the commission shall be made on the earlier of the date it adopts a financing order or December 31, 2004.

(d) Except as provided in paragraphs (4) and (5) of subdivision (b) and in subdivision (c), the obligation to pay fixed recovery amounts and any associated fixed recovery tax amounts cannot be avoided by the formation of a local publicly owned electric utility on or after December 19, 2003, or by annexation of any portion of the service territory of the recovery corporation by an existing local publicly owned electric utility.

(e) Recovery bonds authorized by the commission's financing orders may be issued in one or more series on or before December 31, 2006.

(f) The commission may issue financing orders in accordance with this article to facilitate the recovery, financing, or refinancing of recovery costs. A financing order may be adopted only upon the application of the recovery corporation and shall become effective in accordance with its terms only after the recovery corporation files with the commission the recovery corporation's written consent to all terms and conditions of the financing order. A financing order may specify how amounts collected from a consumer shall be allocated between fixed recovery amounts, any associated fixed recovery tax amounts, and other charges.

(g) Notwithstanding Section 455.5 or 1708, or any other provision of law, except as otherwise provided in Section 848.7 or in this subdivision with respect to recovery property that has been made the basis for the issuance of recovery bonds and with respect to any associated fixed recovery tax amounts, the financing order, the fixed recovery amounts

and any associated fixed recovery tax amounts shall be irrevocable, and the commission shall not have authority either by rescinding, altering, or amending the financing order or otherwise, to revalue or revise for ratemaking purposes, the recovery costs or the costs of recovering, financing, or refinancing the recovery costs, determine that the fixed recovery amounts, any associated fixed recovery tax amounts or rates are unjust or unreasonable, or in any way reduce or impair the value of recovery property or of the right to receive any associated fixed recovery tax amounts either directly or indirectly by taking fixed recovery amounts or any associated fixed recovery tax amounts into account when setting other rates for the recovery corporation or when setting charges for the Department of Water Resources; nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement, or termination. Except as otherwise provided in this subdivision, the State of California does hereby pledge and agree with the recovery corporation, owners of recovery property, and holders of recovery bonds that the state shall neither limit nor alter the fixed recovery amounts, any associated fixed recovery tax amounts, recovery property, financing orders, or any rights thereunder until the recovery bonds, together with the interest thereon, are fully paid and discharged, and any associated fixed recovery tax amounts have been satisfied or, in the alternative, have been refinanced through an additional issue of recovery bonds; provided nothing contained in this section shall preclude the limitation or alteration if and when adequate provision shall be made by law for the protection of the recovery corporation, owners, and holders. The financing entity is authorized to include this pledge and undertaking for the state in these recovery bonds. Notwithstanding any other provision of this section, the commission shall approve adjustments to the fixed recovery amounts and any associated fixed recovery tax amounts as may be necessary to ensure timely recovery of all recovery costs that are the subject of the pertinent financing order, and the costs of capital associated with the recovery, financing, or refinancing thereof, including servicing and retiring the recovery bonds contemplated by the financing order. When setting other rates for the recovery corporation, nothing in this subdivision shall prevent the commission from taking into account either of the following:

(1) Any collection of fixed recovery amounts in excess of amounts actually required to pay recovery costs financed or refinanced by recovery bonds.

(2) Any collection of fixed recovery tax amounts in excess of amounts actually required to pay federal and State of California income and franchise taxes associated with fixed recovery amounts; provided that this would not result in a recharacterization of the tax, accounting,

and other intended characteristics of the financing, including, but not limited to, either of the following:

(A) Treating the recovery bonds as debt of the recovery corporation or its affiliates for federal income tax purposes.

(B) Treating the transfer of the recovery property by the recovery corporation as a true sale for bankruptcy purposes.

(h) (1) Financing orders issued under this article do not constitute a debt or liability of the state or of any political subdivision thereof, and do not constitute a pledge of the full faith and credit of the state or any of its political subdivisions, but are payable solely from the funds provided therefor under this article and shall be consistent with Sections 1 and 18 of Article XVI of the California Constitution. This subdivision shall in no way preclude bond guarantees or enhancements pursuant to this article. All recovery bonds shall contain on the face thereof a statement to the following effect: ''Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond.''

(2) The issuance of recovery bonds under this article shall not directly, indirectly, or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation therefor or to make any appropriation for their payment.

(i) The commission shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval thereof within 120 days of the recovery corporation making application therefor. The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed recovery amounts and any associated fixed recovery tax amounts that are the subject of the pertinent financing order, as required by subdivision (g). The procedure shall require the commission to determine whether the adjustments are required on each anniversary of the issuance of the financing order, and at the additional intervals as may be provided for in the financing order, and for the adjustments, if required, to be approved within 90 days of each anniversary of the issuance of the financing order, or of each additional interval provided for in the financing order.

(j) Fixed recovery amounts are recovery property when, and to the extent that, a financing order authorizing the fixed recovery amounts has become effective in accordance with this article, and the recovery property shall thereafter continuously exist as property for all purposes with all of the rights and privileges of this article for the period and to the extent provided in the financing order, but in any event until the recovery bonds are paid in full, including all principal, interest, premium, costs, and arrearages thereon.

(k) This article and any financing order made pursuant to this article do not amend, reduce, modify, or otherwise affect the right of the Department of Water Resources to recover its revenue requirements and to receive the charges that it is to recover and receive pursuant to Division 27 (commencing with Section 80000) of the Water Code, or pursuant to any agreement entered into by the commission and the Department of Water Resources pursuant to that division.

848.2. (a) The financing entity may issue recovery bonds upon approval by the commission in the pertinent financing orders. Recovery bonds shall be nonrecourse to the credit or any assets of the recovery corporation, other than the recovery property as specified in the pertinent financing order.

(b) The recovery corporation may sell and assign all or portions of its interest in recovery property to one or more financing entities that make that recovery property the basis for issuance of recovery bonds, to the extent approved in the financing order. The recovery corporation or financing entity may pledge recovery property as collateral, directly or indirectly, for recovery bonds to the extent approved in the pertinent financing orders providing for a security interest in the recovery property, in the manner set forth in Section 848.3. In addition, recovery property may be sold or assigned by (1) the financing entity or a trustee for the holders of recovery bonds in connection with the exercise of remedies upon a default, or (2) any person acquiring the recovery property after a sale or assignment pursuant to this subdivision.

(c) To the extent that any interest in recovery property is so sold or assigned, or is so pledged as collateral, the commission shall authorize the recovery corporation to contract with the financing entity that it will continue to operate its system to provide service to consumers within its service territory, will collect amounts in respect of the fixed recovery amounts for the benefit and account of the financing entity, and will account for and remit these amounts to or for the account of the financing entity. Contracting with the financing entity in accordance with that authorization shall not impair or negate the characterization of the sale, assignment, or pledge as an absolute transfer, a true sale, or security interest, as applicable.

(d) Notwithstanding Section 1708 or any other provision of law, any requirement under this article or a financing order that the commission take action with respect to the subject matter of a financing order shall be binding upon the commission, as it may be constituted from time to time, and any successor agency exercising functions similar to the commission, and the commission shall have no authority to rescind, alter, or amend that requirement in a financing order. The approval by the commission in a financing order of the issuance by the recovery corporation or a financing entity of recovery bonds shall include the

approvals, if any, as may be required by Article 5 (commencing with Section 816) and Section 701.5. Nothing in Section 701.5 shall be construed to prohibit the issuance of recovery bonds upon the terms and conditions as may be approved by the commission in a financing order. Section 851 is not applicable to the transfer or pledge of recovery property, the issuance of recovery bonds, or related transactions approved in a financing order.

848.3. (a) A security interest in recovery property is valid, is enforceable against the pledgor and third parties, subject to the rights of any third parties holding security interests in the recovery property perfected in the manner described in this section, and attaches when all of the following have taken place:

(1) The commission has issued the financing order authorizing the fixed recovery amounts included in the recovery property.

(2) Value has been given by the pledgees of the recovery property.

(3) The pledgor has signed a security agreement covering the recovery property.

(b) A valid and enforceable security interest in recovery property is perfected when it has attached and when a financing statement has been filed in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code naming the pledgor of the recovery property as ''debtor'' and identifying the recovery property. Any description of the recovery property shall be sufficient if it refers to the financing order creating the recovery property. A copy of the financing statement shall be filed with the commission by the recovery corporation that is the pledgor or transferor of the recovery property, and the commission may require the recovery corporation to make other filings with respect to the security interest in accordance with procedures it may establish, provided that the filings shall not affect the perfection of the security interest.

(c) A perfected security interest in recovery property is a continuously perfected security interest in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting security interests shall rank according to priority in time of perfection. Recovery property shall constitute property for all purposes, including for contracts securing recovery bonds, whether or not the revenues and proceeds arising with respect thereto have accrued.

(d) Subject to the terms of the security agreement covering the recovery property and the rights of any third parties holding security interests in the recovery property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to the recovery property

with other funds of the recovery corporation that is the pledgor or transferor of the recovery property, or by any security interest in a deposit account of that recovery corporation perfected under Division 9 (commencing with Section 9101) of the Commercial Code into which the revenues are deposited. Subject to the terms of the security agreement, upon compliance with the requirements of paragraph (1) of subdivision (b) of Section 9312 of the Commercial Code, the pledgees of the recovery property shall have a perfected security interest in all cash and deposit accounts of the recovery corporation in which revenues arising with respect to the recovery property have been commingled with other funds, but the perfected security interest shall be limited to an amount not greater than the amount of the revenues with respect to the recovery property received by the recovery corporation within 12 months before (1) any default under the security agreement or (2) the institution of insolvency proceedings by or against the recovery corporation, less payments from the revenues to the pledgees during that 12-month period.

(e) If an event of default occurs under the security agreement covering the recovery property, the pledgees of the recovery property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under Division 9 (commencing with Section 9101) of the Commercial Code, and are entitled to foreclose or otherwise enforce their security interest in the recovery property, subject to the rights of any third parties holding prior security interests in the recovery property perfected in the manner provided in this section. In addition, the commission may require in the financing order creating the recovery property that, in the event of default by the recovery corporation in payment of revenues arising with respect to the recovery property, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under Section 848.4, of the recovery property, and without limiting any other remedies available to the pledgees or transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the recovery property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the recovery bonds, and other costs arising under the security agreement, shall be remitted to the debtor.

(f) Sections 9204 and 9205 of the Commercial Code apply to a pledge of recovery property by the recovery corporation, an affiliate of the recovery corporation, or a financing entity.

(g) This section sets forth the terms by which a consensual security interest can be created and perfected in the recovery property. Unless otherwise ordered by the commission with respect to any series of recovery bonds on or prior to the issuance of the series, there shall exist a statutory lien as provided in this subdivision. Upon the effective date of the financing order, there shall exist a first priority lien on all recovery property then existing or thereafter arising pursuant to the terms of the financing order. This lien shall arise by operation of this section automatically without any action on the part of the recovery corporation, any affiliate thereof, the financing entity, or any other person. This lien shall secure all obligations, then existing or subsequently arising, to the holders of the recovery bonds issued pursuant to the financing order, the trustee or representative for the holders, and any other entity specified in the financing order. The persons for whose benefit this lien is established shall, upon the occurrence of any defaults specified in the financing order, have all rights and remedies of a secured party upon default under Division 9 (commencing with Section 9101) of the Commercial Code, and are entitled to foreclose or otherwise enforce this statutory lien in the recovery property. This lien attaches to the recovery property regardless of who owns, or is subsequently determined to own, the recovery property, including the recovery corporation, any affiliate thereof, the financing entity, or any other person. This lien shall be valid, perfected, and enforceable against the owner of the recovery property and all third parties upon the effectiveness of the financing order without any further public notice; provided, however, that any person may, but is not required to, file a financing statement in accordance with subdivision (b). Financing statements so filed may be ''protective filings'' and are not evidence of the ownership of the recovery property.

A perfected statutory lien in recovery property is a continuously perfected lien in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting liens shall rank according to priority in time of perfection. Recovery property shall constitute property for all purposes, including for contracts securing recovery bonds, whether or not the revenues and proceeds arising with respect thereto have accrued.

In addition, the commission may require, in the financing order creating the recovery property, that, in the event of default by the recovery corporation in the payment of revenues arising with respect to recovery property, the commission and any successor thereto, upon the application by the beneficiaries of the statutory lien, and without limiting any other remedies available to the beneficiaries by reason of the default, shall order the sequestration and payment to the beneficiaries of revenues arising with respect to the recovery property. Any order shall remain in full force and effect notwithstanding any bankruptcy,

reorganization, or other insolvency proceedings with respect to the debtor. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the recovery bonds, and other costs arising in connection with the documents governing the recovery bonds, shall be remitted to the debtor.

848.4. (a) A transfer of recovery property by the recovery corporation to an affiliate or to a financing entity, or by an affiliate of the recovery corporation or a financing entity to another financing entity, which the parties in the governing documentation have expressly stated to be a sale or other absolute transfer, in a transaction approved in a financing order, shall be treated as an absolute transfer of all of the transferor's right, title, and interest (as in a true sale), and not as a pledge or other financing, of the recovery property, other than for federal and state income and franchise tax purposes. The grant to holders of recovery bonds of a preferred right to revenues of the recovery corporation, or the provision by the company of other credit enhancement with respect to recovery bonds, shall not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(b) A transfer of recovery property shall be deemed perfected as against third persons when both of the following have taken place:

(1) The commission has issued the financing order authorizing the fixed recovery amounts included in the recovery property.

(2) An assignment of the recovery property in writing has been executed and delivered to the transferee.

(c) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code naming the assignor of the recovery property as debtor and identifying the recovery property has priority. Any description of the recovery property is sufficient if it refers to the financing order creating the recovery property. A copy of the financing statement shall be filed by the assignee with the commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures it may establish, but these filings shall not affect the perfection of the transfer.

848.5. Any successor to the recovery corporation, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding, or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall perform and satisfy all obligations of the recovery corporation pursuant to this article in the same manner and to the same extent as the recovery corporation, including, but not limited to, collecting and paying to the holders of recovery bonds, or their representatives, or the applicable financing entity revenues arising with

respect to the recovery property sold to the applicable financing entity or pledged to secure recovery bonds. Any successor to the recovery corporation is entitled to receive any fixed recovery tax amounts otherwise payable to the recovery corporation.

848.6. The authority of the commission to issue financing orders pursuant to Section 848.1 shall expire on December 31, 2006. The expiration of the authority shall have no effect upon financing orders adopted by the commission pursuant to this article or any recovery property arising therefrom, or upon the charges authorized to be levied thereunder, or the rights, interests, and obligations of the recovery corporation or a financing entity or holders of recovery bonds pursuant to the financing order, or the authority of the commission to monitor, supervise, or take further action with respect to the order in accordance with the terms of this article and of the order.

848.7. Notwithstanding subdivision (g) of Section 848.1, the commission shall credit ratepayers, in a manner to be determined by the commission, with the net after tax amount of any payments, offsets, or other credits the recovery corporation actually receives from generators of electricity or other energy suppliers that would have reduced the unamortized balance of the recovery corporation's regulatory asset created under the commission's Decision No. 03-12-035 but for the prior issuance of recovery bonds.

848.8. Notwithstanding any other law, regulations adopted to implement this article are not subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 6. Section 1731 of the Public Utilities Code is amended to read:

1731. (a) The commission shall set an effective date when issuing an order or decision. The commission may set the effective date of an order or decision prior to the date of issuance of the order or decision.

(b) After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating

to security transactions and the transfer or encumbrance of utility property. For purposes of this article, ''date of issuance'' means the date when the commission mails the order or decision to the parties to the action or proceeding.

(c) No cause of action arising out of any order or decision of the commission construing, applying, or implementing the provisions of Chapter 4 of the Statutes of the 2001–02 First Extraordinary Session shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 10 days after the date of issuance of the order or decision. The commission shall issue its decision and order on rehearing within 20 days after the filing of that application.

(d) No cause of action arising out of any order or decision of the commission construing, applying, or implementing the provisions of Article 5.6 (commencing with Section 848) of Chapter 4 shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 10 days after the date of issuance of the order or decision. The commission shall issue its decision and order on rehearing within 20 days after the filing of that application.

SEC. 7. Section 1769 is added to the Public Utilities Code, to read:

1769. The following procedures shall apply to judicial review of an order or decision of the commission interpreting, implementing, or applying the provisions of Article 5.6 (commencing with Section 848) of Chapter 4:

(a) Within 10 days after the commission issues its order or decision denying the application for a rehearing, or, if the application is granted, then within 10 days after the commission issues its decision on rehearing, any aggrieved party may petition for a writ of review in the California Supreme Court for the purpose of determining the lawfulness of the original order or decision or of the order or decision on rehearing. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified. No order of the commission interpreting, implementing, or applying the provisions of Article 5.6 (commencing with Section 848) of Chapter 4 shall be subject to review in the courts of appeal.

(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date when the commission mails the decision or grant to the parties to the action or proceeding.

(d) The Legislature hereby declares that if a writ issues in an action under this section, delay in the determination of the writ will delay implementation of a securitized financing, thereby diminishing approximately $1 billion of total savings to Pacific Gas and Electric Company's ratepayers that might be achieved if a securitized financing were implemented immediately. Therefore, to maximize ratepayer benefits, review under this section should be expedited.

(e) The provisions of this article apply to actions under this section to the extent that those provisions are not in conflict with this section.

(f) 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. 8. 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. 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.

SEC. 10. The Legislature finds and declares that, because of the unique circumstances applicable only to the Pacific Gas and Electric Company bankruptcy, 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. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

(a) In Decision 03-12-035, dated December 18, 2003, the California Public Utilities Commission approved a modified settlement agreement with Pacific Gas and Electric Company (PG&E) and PG&E Corporation allowing PG&E to emerge from bankruptcy promptly.

(b) The modified settlement agreement authorizes PG&E to recover a new regulatory asset and specified taxes from ratepayers.

(c) PG&E has agreed that, after emerging from bankruptcy, it will seek to implement, as expeditiously as practical, a securitized financing using a dedicated rate component to refinance the unamortized amount

of the regulatory asset and associated taxes, provided several conditions are met.

(d) One of the conditions is that satisfactory authorizing legislation is enacted.

(e) The California Public Utilities Commission estimates that approximately $1 billion of total ratepayer savings might be achieved if a securitized financing were implemented immediately for this purpose.

(f) The amount of ratepayer savings will be reduced if the securitized financing is delayed.

(g) To maximize ratepayer benefits within the service area of PG&E, it is necessary for this act to take effect immediately.

CHAPTER 47

An act to amend Sections 12102 and 12114 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 14, 2004. Filed with Secretary of State June 14, 2004.]

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

SECTION 1. Section 12102 of the Insurance Code is amended to read:

12102. (a) An insurer with a certificate of authority to transact the business of financial guaranty insurance as defined in Section 12100 may also transact the business of surety insurance as defined in Section 105.

(b) An insurer licensed in this state to transact financial guaranty insurance may not transact any other classes of insurance in this state except surety insurance.

(c) An insurer that anywhere transacts or is licensed for any classes other than financial guaranty insurance, surety insurance, and credit insurance shall not be eligible for a certificate of authority for the class of financial guaranty insurance in this state.

(d) A financial guaranty insurance corporation may only assume in this state those lines of insurance it is admitted to transact in this state.

(e) In other states, an insurer may assume financial guaranty, surety, and credit lines of insurance if it is authorized to transact those lines of insurance in other states.

(f) After licensure the holder shall continue to comply with the requirements of this section.

SEC. 2. Section 12114 of the Insurance Code is amended to read:

12114. (a) At least 95 percent of a financial guaranty insurance corporation's outstanding total net liability on the kinds of obligations enumerated in subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (b) of Section 12112 shall be investment grade.

(b) The financial guaranty insurance corporation shall at all times maintain capital, surplus, and contingency reserve in the aggregate no less than the sum of the following:

(1) 0.3333 percent of the total net liability under guaranties of municipal bonds and utility first mortgage obligations.

(2) 0.6666 percent of the total net liability under guaranties of investment grade asset-backed securities.

(3) 1.0 percent of the total net liability under guaranties, secured by collateral or having a term of seven years or less of:

(A) Investment grade industrial development bonds, and

(B) Other investment grade obligations.

(4) 1.5 percent of the total net liability under guaranties of other investment grade obligations.

(5) 2.0 percent of the total net liability under guaranties of:

(A) Noninvestment grade consumer debt obligations, and

(B) Noninvestment grade asset-backed securities.

(6) 3.0 percent of the total net liability under guaranties of noninvestment grade obligations secured by first mortgages on commercial real estate and having loan-to-value ratios of 80 percent or less.

(7) 5.0 percent of the total net liability under guaranties of other noninvestment grade obligations.

(8) If the amount of collateral required by paragraph (3) of subdivision (b) is no longer maintained, that proportion of the obligation insured which is not so collateralized shall be subject to the aggregate limits specified in paragraph (4) of subdivision (b).

(9) Additional surplus determined by the commissioner to be adequate to support the writing of surety insurance and credit insurance if the financial guaranty insurance corporation has been authorized to transact surety insurance and credit insurance as authorized by Section 12102.

(c) Whenever the reserves for outstanding credit insurance losses or loss expenses or any insurer licensed in this state to transact financial guaranty insurance are determined by the commissioner to be inadequate, he or she shall require the insurer to maintain additional reserves.

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:

Allowing financial guaranty insurers to also be licensed to underwrite credit insurance will result in an increased number of financial guaranty insurers eligible to be licensed in California increasing competition for financial guaranty insurance and reducing costs associated with insuring public and private securities.

CHAPTER 48

An act to amend Section 63021.5 of the Government Code, relating to economic development, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 17, 2004. Filed with Secretary of State June 18, 2004.]

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

SECTION 1. Section 63021.5 of the Government Code is amended to read:

63021.5. (a) The bank shall be governed and its corporate power exercised by a board of directors that shall consist of the following persons:

(1) The Director of Finance or his or her designee.

(2) The Treasurer or his or her designee.

(3) The Secretary of Business, Transportation and Housing or his or her designee, who shall serve as chair of the board.

(b) Any designated director shall serve at the pleasure of the designating power.

(c) Two of the members shall constitute a quorum and the affirmative vote of two board members shall be necessary for any action to be taken by the board.

(d) No member of the board shall participate in any bank action or attempt to influence any decision or recommendation by any employee of, or consultant to, the bank that involves a sponsor of which he or she is a representative or in which the member or a member of his or her immediate family has a personal financial interest within the meaning of Section 87100. For purposes of this section, ''immediate family'' means the spouse, children, and parents of the member.

(e) Except as provided in this subdivision, the members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the

extent that reimbursement for these expenses is not otherwise provided or payable by another public agency, and shall receive one hundred dollars ($100) for each full day of attending meetings of the authority.

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

In order that the work of the board of directors of the California Infrastructure and Economic Development Bank may continue without interruption, it is necessary that this act take effect immediately.

CHAPTER 49

An act to amend Section 259 of the Code of Civil Procedure, and to amend Section 71601 of the Government Code, relating to courts.

[Approved by Governor June 17, 2004. Filed with Secretary of State June 18, 2004.]

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

SECTION 1. Section 259 of the Code of Civil Procedure is amended to read:

259. Subject to the supervision of the court, every court commissioner shall have power to do all of the following:

(a) Hear and determine ex parte motions for orders and alternative writs and writs of habeas corpus in the superior court for which the court commissioner is appointed.

(b) Take proof and make and report findings thereon as to any matter of fact upon which information is required by the court. Any party to any contested proceeding may except to the report and the subsequent order of the court made thereon within five days after written notice of the court's action. A copy of the exceptions shall be filed and served upon opposing party or counsel within the five days. The party may argue any exceptions before the court on giving notice of motion for that purpose within 10 days from entry thereof. After a hearing before the court on the exceptions, the court may sustain, or set aside, or modify its order.

(c) Take and approve any bonds and undertakings in actions or proceedings, and determine objections to the bonds and undertakings.

(d) Act as temporary judge when otherwise qualified so to act and when appointed for that purpose, on stipulation of the parties litigant. While acting as temporary judge the commissioner shall receive no compensation therefor other than compensation as commissioner.

(e) Hear and report findings and conclusions to the court for approval, rejection, or change, all preliminary matters including motions or petitions for the custody and support of children, the allowance of temporary spousal support, costs and attorneys' fees, and issues of fact in contempt proceedings in proceedings for support, dissolution of marriage, nullity of marriage, or legal separation.

(f) Hear actions to establish paternity and to establish or enforce child and spousal support pursuant to subdivision (a) of Section 4251 of the Family Code.

(g) Hear, report on, and determine all uncontested actions and proceedings subject to the requirements of subdivision (d).

SEC. 2. Section 71601 of the Government Code is amended to read:

71601. For purposes of this chapter, the following definitions shall apply:

(a) ''Appointment'' means the offer to and acceptance by a person of a position in the trial court in accordance with this chapter and the trial court's personnel policies, procedures, and plans.

(b) ''Employee organization'' means any organization that includes trial court employees and has as one of its primary purposes representing those employees in their relations with the trial court.

(c) ''Hiring'' means appointment as defined in subdivision (a).

(d) ''Mediation'' means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the trial court and the recognized employee organization or recognized employee organizations through interpretation, suggestion, and advice.

(e) ''Meet and confer in good faith'' means that a trial court or representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter or in a local rule, or when the procedures are utilized by mutual consent.

(f) ''Personnel rules,'' ''personnel policies, procedures, and plans,'' and ''rules and regulations'' mean policies, procedures, plans, rules, or regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

(g) ''Promotion'' means promotion within the trial court as defined in the trial court's personnel policies, procedures, and plans, subject to meet and confer in good faith.

(h) ''Recognized employee organization'' means an employee organization that has been formally acknowledged to represent trial court employees by the county under Sections 3500 to 3510, inclusive, prior to the implementation date of this chapter, or by the trial court under Rules 2201 to 2210, inclusive, of the California Rules of Court, as those rules read on April 23, 1997, Sections 70210 to 70219, inclusive, or Article 3 (commencing with Section 71630) of this chapter.

(i) ''Subordinate judicial officer'' means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, child support commissioner, referee, traffic trial commissioner, traffic referee, juvenile court referee, juvenile hearing officer, and temporary judge.

(j) ''Transfer'' means transfer within the trial court as defined in the trial court's personnel policies, procedures, and plans, subject to meet and confer in good faith.

(k) ''Trial court'' means a superior court.

(*l*) ''Trial court employee'' means a person who is both of the following:

(1) Paid from the trial court's budget, regardless of the funding source. For the purpose of this paragraph, ''trial court's budget'' means funds from which the presiding judge of a trial court, or his or her designee, has authority to control, authorize, and direct expenditures, including, but not limited to, local revenues, all grant funds, and trial court operations funds.

(2) Subject to the trial court's right to control the manner and means of his or her work because of the trial court's authority to hire, supervise, discipline, and terminate employment. For purposes of this paragraph only, the ''trial court'' includes the judges of a trial court or their appointees who are vested with or delegated the authority to hire, supervise, discipline, and terminate.

(m) A person is a ''trial court employee'' if and only if both paragraphs (1) and (2) of subdivision (*l*) are true irrespective of job classification or whether the functions performed by that person are identified in Rule 810 of the California Rules of Court. The phrase ''trial court employee'' includes those subordinate judicial officers who satisfy paragraphs (1) and (2) of subdivision (*l*). The phrase ''trial court employee'' does not include temporary employees hired through agencies, jurors, individuals hired by the trial court pursuant to an independent contractor agreement, individuals for whom the county or trial court reports income to the Internal Revenue Service on a Form 1099 and does not withhold employment taxes, sheriffs, and judges whether elected or appointed. Any temporary employee, whether hired through an agency or not, shall not be employed in the trial court for a

period exceeding 180 calendar days, except that for court reporters in a county of the first class, a trial court and a recognized employee organization may provide otherwise by mutual agreement in a memorandum of understanding or other agreement.

CHAPTER 50

An act to amend Section 3439.04 of the Civil Code, relating to fraudulent transfers.

[Approved by Governor June 17, 2004. Filed with Secretary of State June 18, 2004.]

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

SECTION 1. Section 3439.04 of the Civil Code is amended to read:

3439.04. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor.

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either:

(A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.

(B) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

(b) In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following:

(1) Whether the transfer or obligation was to an insider.

(2) Whether the debtor retained possession or control of the property transferred after the transfer.

(3) Whether the transfer or obligation was disclosed or concealed.

(4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(5) Whether the transfer was of substantially all the debtor's assets.

(6) Whether the debtor absconded.

(7) Whether the debtor removed or concealed assets.

(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

(11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.

(c) The amendment to this section made during the 2004 portion of the 2003–04 Regular Session of the Legislature, set forth in subdivision (b), does not constitute a change in, but is declaratory of, existing law, and is not intended to affect any judicial decisions that have interpreted this chapter.

CHAPTER 51

An act to amend Section 53155 of, and to add Section 53159 to, the Government Code, relating to emergency response costs.

[Approved by Governor June 17, 2004. Filed with Secretary of State June 18, 2004.]

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

SECTION 1. Section 53155 of the Government Code is amended to read:

53155. In no event shall a person's liability under this article for the expense of an emergency response exceed twelve thousand dollars ($12,000) for a particular incident.

SEC. 2. Section 53159 is added to the Government Code, to read:

53159. (a) As used in this section, the following terms have the following meanings:

(1) ''Expenses of an emergency response'' means those reasonable and necessary costs directly incurred by public agencies, for-profit entities, or not-for-profit entities that make an appropriate emergency response to an incident, and include the cost of providing police, firefighting, search and rescue, and emergency medical services at the scene of an incident, and salaries of the persons who respond to the incident, but does not include charges assessed by an ambulance service.

(2) ''Public agency'' means the state and any city, county, municipal corporation, or other public authority that is located in whole or in part

in this state and that provides police, firefighting, medical, or other emergency services.

(b) Any person who intentionally, knowingly, and willfully enters into any area that is closed or has been closed to the public by competent authority for any reason, or an area that a reasonable person under the circumstances should have known was closed to the public, is liable for the expenses of an emergency response required to search for or rescue that person, or if the person was operating a vehicle, any of his or her passengers, plus the expenses for the removal of any inoperable vehicle. Posting a sign, placing a barricade, a restraining or retaining wall, roping off an area, or any other device is sufficient indication that an area is closed to the public due to danger of injury, for the public's safety, or for any other reason.

(c) A person who drives a vehicle on a public street or highway that is temporarily covered by a rise in water level, including groundwater or overflow of water, and that is barricaded by any of the means described in subdivision (b), because of flooding, is liable for the expenses of any emergency response that is required to remove from the public street or highway, the driver, or any passenger in the vehicle that has become inoperable on the public street or highway, or the vehicle that has become inoperable on the public street or highway.

(d) Unless otherwise provided by law, this section shall apply to all persons, regardless of whether the person is on foot, on skis or snowshoes, or is operating a motor vehicle, bicycle, vessel, watercraft, raft, snowmobile, all-terrain vehicle, or any other boat or vehicle of any description.

(e) This section shall not apply to any person who is authorized by the landowner, lessor, or manager of the closed area, to be in the closed area, and further shall have no application to any federal, state, or local government official who is in the closed area as part of his or her official duty, nor to any public utility performing services consistent with its public purpose, nor to any person acting in concert with a government authorized search or rescue. A person who was attempting to rescue another person or an animal shall not be liable for expenses of an emergency response under this section.

(f) Expenses of an emergency response are a charge against the person liable for those expenses pursuant to subdivision (b) or (c). The charge constitutes a debt of that person and may be collected proportionately as specified in subdivision (g). The debt shall apply only to the person who intentionally, knowingly, and willfully enters the closed area, and not to his or her family, heirs, or assigns. The parent or parents of a minor child who has violated subdivision (b) or (c) may be responsible for the debt.

(g) The debt may be collected proportionately by the public agencies, for-profit entities, and not-for-profit entities that incur the expenses. The

liability imposed under this section shall be in addition to, and not in limitation of, any other liability, fines, or fees that are imposed by law.

(h) An insurance policy may exclude coverage for a person's liability for expenses of an emergency response.

CHAPTER 52

An act to amend Sections 33127, 33128, 41020.5, 41320.1, 41326, 41326.1, 41327, 41328, 41474, 42127, 42127.1, 42127.6, and 42127.8 of, and to add Sections 41327.1, and 41327.2 to, the Education Code, and to amend Sections 3540.2, 3547.5, and 53260 of the Government Code, relating to school districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 21, 2004. Filed with Secretary of State June 21, 2004.]

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

SECTION 1. Section 33127 of the Education Code is amended to read:

33127. (a) The Superintendent of Public Instruction, the Controller, and the Director of the Department of Finance shall develop, on or before March 1, 1989, standards and criteria to be reviewed and adopted by the State Board of Education, and to be used by local educational agencies in the development of annual budgets and the management of subsequent expenditures from that budget. During the development of the standards and criteria, the Superintendent of Public Instruction shall convene a committee composed of representatives from school districts, county offices of education, state agencies, the Legislature, and appropriate labor and professional organizations. The committee may review and comment on the proposal standards and criteria prior to their adoption. In addition, the standards and criteria shall be used to monitor the fiscal stability of local educational agencies as provided for in Sections 1240.1, 1240.2, 1621, 1623, 33131, 42127, and 42127.1.

(b) The Superintendent of Public Instruction, the Controller, and the Director of the Department of Finance shall update the standards and criteria developed pursuant to subdivision (a) on or before September 1, 2005. The updated standards and criteria shall be reviewed and adopted pursuant to the procedure established by subdivision (a) and are applicable to local educational agency budgets commencing with the 2006–07 fiscal year and each fiscal year thereafter.

(c) After September 1, 2005, to the extent necessary, any revisions or updates to the standards and criteria shall be developed by the Superintendent of Public Instruction, the Controller, and the Director of the Department of Finance pursuant the procedures established by subdivision (a). The revisions or updates shall specify the fiscal year in which the revisions or updates are applicable.

SEC. 2. Section 33128 of the Education Code, as amended by Section 6.7 of Chapter 1168 of the Statutes of 2002, is amended to read:

33128. (a) The standards and criteria to be adopted by the State Board of Education pursuant to Section 33127 shall include, but not be limited to, comparisons and reviews, including appropriate methods of projection, of all of the following:

(1) Average daily attendance.

(2) Revenues and expenditures.

(3) Reserves and fund balance.

(4) Multiyear commitments, including cost-of-living adjustments.

(b) In addition to the requirements of subdivision (a), the standards and criteria to be adopted by the State Board of Education pursuant to Section 33127 shall include, but not be limited to, all of the following:

(1) Clear definitions and guidelines for positive, qualified, and negative interim financial certifications pursuant to Sections 42130 and 42131.

(2) District financial health indicators to provide a comprehensive review and assessment of the financial condition of districts and to help identify districts that are developing financial problems before the problems become severe. The indicators shall take into account issues including, but not limited to, all of the following:

(A) Increasing or decreasing balances available for general purposes and general purpose reserve size relative to the standard for the district.

(B) Long-term commitments for rates of increase in significant cost centers that are more or less than current revenue growth rate projections, including the projected cost change of the workforce taking into account the progression of newer hires and existing staff through the salary schedule and likely turnover, and all compensation for the superintendent of the school district and executive positions reporting directly to the superintendent of the school district.

(C) Use of one-time revenues for ongoing costs.

(D) Use of ongoing revenues for one-time costs.

(E) Appropriate recognition and amortization of future commitments including any district-created benefit program.

(F) Facilities maintenance funding adequate to preserve functionality of facilities for their normal life.

SEC. 3. Section 41020.5 of the Education Code is amended to read:

41020.5. (a) If the Controller determines by two consecutive quality control reviews pursuant to Section 14504.2, or if a county superintendent of schools determines, that audits performed by a certified public accountant or public accountant under Section 41020 were not performed in substantial conformity with provisions of the audit guide, or that the audit reports, including amended reports, submitted by February 15 following the close of the fiscal year audited, for two consecutive years do not conform to provisions of the audit guide as required by Section 14504, the Controller or the county superintendent of schools, as appropriate, shall notify in writing the certified public accountant or public accountant and the California Board of Accountancy.

If the certified public accountant or public accountant does not file an appeal in writing with the California Board of Accountancy within 30 calendar days after receipt of the notification from the Controller or county superintendent of schools, the s determination of the Controller or county superintendent of schools under this section shall be final.

(b) If an appeal is filed with the California Board of Accountancy, the board shall complete an investigation of the appeal within 90 days of the filing date. On the basis of the investigation, the board may do either of the following:

(1) Find that the determination of the Controller or county superintendent of schools should not be upheld and has no effect.

(2) Schedule the appeal for a hearing, in which case, the final action on the appeal shall be completed by the board within one year from the date of filing the appeal.

(c) If the determination of the Controller or county superintendent of schools under subdivision (a) becomes final, the certified public accountant or public accountant shall be ineligible to conduct audits under Section 41020 for a period of three years, or, in the event of an appeal, for any period, and subject to the conditions, that may be ordered by the California Board of Accountancy. Not later than the first day of March of each year, the Controller shall notify each school district and county office of education of those certified public accountants or public accountants determined to be ineligible under this section. School districts and county offices of education shall not use the audit services of a certified public accountant or public accountant ineligible under this section.

For the purposes of this section, the term ''certified public accountant or public accountant'' shall include any person or firm entering into a contract to conduct an audit under Section 41020.

This section shall not preclude the California Board of Accountancy from taking any disciplinary action it deems appropriate under other provisions of law.

SEC. 4. Section 41320.1 of the Education Code is amended to read:

41320.1. Acceptance by the district of the apportionments made pursuant to Section 41320 constitutes the agreement by the district to all of the following conditions:

(a) The Superintendent of Public Instruction shall appoint a trustee who has recognized expertise in management and finance and may employ, on a short-term basis, any staff necessary to assist the trustee, including, but not limited to, certified public accountants, as follows:

(1) The expenses incurred by the trustee and any necessary staff shall be borne by the district.

(2) The Superintendent shall establish the terms and conditions of the employment, including the remuneration of the trustee. The trustee shall serve at the pleasure of, and report directly to, the Superintendent.

(3) The trustee, and any necessary staff, shall serve until the loan authorized by this section is repaid, the district has adequate fiscal systems and controls in place, and the Superintendent has determined that the district's future compliance with the fiscal plan approved for the district under Section 41320 is probable. The Superintendent shall notify the county superintendent of schools, the Legislature, the Department of Finance, and the Controller no less than 60 days prior to the time that the Superintendent expects these conditions to be met.

(4) Before the district repays the loan, including interest, the recipient of the loan shall select an auditor from a list established by the Superintendent and the Controller to conduct an audit of its fiscal systems. If the fiscal systems are deemed to be inadequate, the Superintendent may retain the trustee until the deficiencies are corrected. The cost of this audit and any additional cost of the trustee shall be borne by the district.

(5) Notwithstanding any other law, all reports submitted to the trustee are public records.

(6) To facilitate the appointment of the trustee and the employment of any necessary staff, for the purposes of this section, the Superintendent is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of the Public Contracts Code.

(7) Notwithstanding any other law, the Superintendent may appoint an employee of the department to act as trustee for up to the duration of the trusteeship. The salary and benefits of that employee shall be established by the Superintendent and paid by the school district. During the time of appointment, the employee is an employee of the school district, but shall remain in the same retirement system under the same plan as if the employee had remained in the department. Upon the expiration or termination of the appointment, the employee shall have

the right to return to his or her former position, or to a position at substantially the same level as that position, with the department. The time served in the appointment shall be counted for all purposes as if the employee had served that time in his or her former position with the department.

(b) The trustee appointed by the Superintendent shall monitor and review the operation of the district. During the period of his or her service, the trustee may stay or rescind any action of the local district governing board that, in the judgment of the trustee, may affect the financial condition of the district. The Superintendent may establish timelines and prescribe formats for reports and other materials to be used by the trustee to monitor and review the operations of the district. The trustee shall approve or reject all reports and other materials required from the district as a condition of receiving the apportionment. The Superintendent, upon the recommendation of the trustee, may reduce any apportionment to the district in an amount up to two hundred dollars ($200) per day for each late or unacceptable report or other material required under Part 24 (commencing with Section 41000), and shall report to the Legislature any failure of the district to comply with the requirements of this section. If the Superintendent determines, at any time, that the fiscal plan approved for the district under Section 41320 is unsatisfactory, he or she may modify the plan as necessary, and the district shall comply with the plan as modified.

(c) At the request of the Superintendent, the Controller shall transfer to the department, from any apportionment to which the district would otherwise have been entitled pursuant to Section 42238, the amount necessary to pay the expenses incurred by the trustee and any associated costs incurred by the county superintendent of schools.

(d) For the fiscal year in which the apportionments are disbursed and each year thereafter, the Controller, or his or her designee, shall cause an audit to be conducted of the books and accounts of the district, in lieu of the audit required by Section 41020. At the Controller's discretion, the audit may be conducted by the Controller, his or her designee, or an auditor selected by the district and approved by the Controller. The costs of these audits shall be borne by the district. These audits shall be required until the Controller determines, in consultation with the Superintendent, that the district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made is repaid, including interest. In addition, the Controller shall conduct quality control reviews pursuant to subdivision (c) of Section 14504.2.

(e) For all purposes of errors and omissions liability insurance policies, the trustee appointed pursuant to this section is an employee of the local education agency to which he or she is assigned. For the

purpose of workers' compensation benefits, the trustee is an employee of the local education agency to which he or she is assigned, except that a trustee appointed pursuant to paragraph (7) of subdivision (a) is an employee of the department for that purpose.

(f) Except for an individual appointed by the Superintendent as trustee pursuant to paragraph (7) of subdivision (a), the state-appointed trustee is a member of the State Teachers' Retirement System, if qualified, for the period of service as trustee, unless the trustee elects in writing not to become a member. A person who is a member or retirant of the State Teachers' Retirement System at the time of appointment shall continue to be a member or retirant of the system for the duration of the appointment. If the trustee chooses to become a member or is already a member, the trustee shall be placed on the payroll of the school district for the purposes of providing appropriate contributions to the system. The Superintendent may also require that any individual appointed as trustee pursuant to paragraph (7) of subdivision (a) be placed on the payroll of the school district for purposes of remuneration, other benefits, and payroll deductions. For the purpose of workers' compensation benefits, the state-appointed trustee is deemed an employee of the local education agency to which he or she is assigned, except that a trustee who is appointed pursuant to paragraph (7) of subdivision (a) is an employee of the department for that purpose.

SEC. 5. Section 41326 of the Education Code is amended to read:

41326. (a) Notwithstanding any other provision of this code, the acceptance by a school district of an apportionment made pursuant to Section 41320 that exceeds an amount equal to 200 percent of the amount of the reserve recommended for that district under the standards and criteria adopted pursuant to Section 33127 constitutes the agreement by the district to the conditions set forth in this article. Prior to applying for an emergency apportionment in the amount identified in this subdivision, a school district governing board shall discuss the need for that apportionment at a regular or special meeting of the governing board and, at that meeting, shall receive testimony regarding the apportionment from parents, exclusive representatives of employees of the district, and other members of the community. For purposes of this article, ''qualifying school district'' means a school district that accepts a loan as described in this subdivision.

(b) The Superintendent shall assume all the legal rights, duties, and powers of the governing board of a qualifying school district. The Superintendent, in consultation with the county superintendent of schools, shall appoint an administrator to act on his or her behalf in exercising the authority described in this subdivision in accordance with all of the following:

(1) The administrator shall serve under the direction and supervision of the Superintendent until terminated by the Superintendent at his or her discretion. The Superintendent shall consult with the county superintendent of schools before terminating the administrator.

(2) The administrator shall have recognized expertise in management and finance.

(3) To facilitate the appointment of the administrator and the employment of any necessary staff, for the purposes of this section, the Superintendent of Public Instruction is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of the Public Contracts Code.

(4) Notwithstanding any other law, the Superintendent may appoint an employee of the state or the office of the county superintendent of schools to act as administrator for up to the duration of the administratorship. During the tenure of his or her appointment, the administrator, if he or she is an employee of the state or the office of the county superintendent, is an employee of the school district, but shall remain in the same retirement system under the same plan that has been provided by his or her employment with the state or the office of the county superintendent. Upon the expiration or termination of the appointment, the employee shall have the right to return to his or her former position, or to a position at substantially the same level as that position, with the state or the office of the county superintendent. The time served in the appointment shall be counted for all purposes as if the administrator had served that time in his or her former position with the state or the office of the county superintendent.

(5) Except for an individual appointed as an administrator by the Superintendent of Public Instruction pursuant to paragraph (4), the administrator shall be a member of the State Teachers' Retirement System, if qualified, for the period of service as administrator, unless he or she elects in writing not to become a member. A person who is a member or retirant of the State Teachers' Retirement System at the time of appointment shall continue to be a member or retirant of the system for the duration of the appointment. If the administrator chooses to become a member or is already a member, the administrator shall be placed on the payroll of the school district for the purposes of providing appropriate contributions to the system. The Superintendent may also require the administrator to be placed on the payroll of the school district for purposes of remuneration, other benefits, and payroll deductions.

(6) For the purposes of workers' compensation benefits, the administrator is an employee of the qualifying district, except that an administrator appointed pursuant to paragraph (4) may be deemed an

employee of the state or office of the county superintendent, as applicable.

(7) The qualifying district shall add the administrator as a covered employee of the school district all for purposes of errors and omissions liability insurance policies.

(8) The salary and benefits of the administrator shall be established by the Superintendent of Public Instruction and paid by the qualifying school district.

(9) The Superintendent or the administrator may, on a short-term basis, employ at district expense any staff necessary to assist the administrator, including, but not limited to, a certified public accountant.

(10) The administrator may do all of the following:

(A) Implement substantial changes in the fiscal policies and practices of the district, including, if necessary, the filing of a petition under Chapter 9 of the federal Bankruptcy Code for the adjustment of indebtedness.

(B) Revise the educational program of the district to reflect realistic income projections and pupil performance relative to state standards.

(C) Encourage all members of the school community to accept a fair share of the burden of the fiscal recovery of the district.

(D) Consult, for the purposes described in this subdivision, with the governing board of the school district, the exclusive representatives of the employees of the district, parents, and the community.

(E) Consult with, and seek recommendations from, the Superintendent, county superintendent of schools, and the County Office Fiscal Crisis and Management Assistance Team authorized pursuant to subdivision (c) of Section 42127.8 for the purposes described in this article.

(F) With the approval of the Superintendent, enter into agreements on behalf of the district and, subject to any contractual obligation of the district, change any existing district rules, regulations, policies, or practices as necessary for the effective implementation of the recovery plans referred to in Sections 41327 and 41327.1.

(c) (1) For the period of time during which the Superintendent of Public Instruction exercises the authority described in subdivision (b), the governing board of the qualifying school district shall serve as an advisory body reporting to the state-appointed administrator, and has no rights, duties, or powers, and is not entitled to any stipend, benefits, or other compensation from the district.

(2) Upon the appointment of an administrator pursuant to this section, the district superintendent of schools is no longer an employee of the district.

(3) A determination of the severance compensation for the district superintendent shall be made pursuant to subdivision (j).

(d) Notwithstanding Section 35031 or any other law, the administrator may, after according the employee reasonable notice and the opportunity for a hearing, terminate the employment of any deputy, associate, assistant superintendent of schools, or any other district level administrator who is employed by a school district under a contract of employment signed or renewed after January 1, 1992, if the employee fails to document, to the satisfaction of the administrator, that prior to the date of the acceptance of the apportionment he or she either advised the governing board of the district, or his or her superior, that actions contemplated or taken by the governing board could result in the fiscal insolvency of the district, or took other appropriate action to avert that fiscal insolvency.

(e) The authority of the Superintendent, and the administrator, under this section shall continue until all of the following occur:

(1) (A) One complete fiscal year has elapsed following the district's acceptance of a loan as described in subdivision (a), or, at any time after one complete fiscal year has elapsed following that acceptance, the administrator determines, and so notifies the Superintendent and the county superintendent of schools, that future compliance by the school district with the recovery plans approved pursuant to paragraph (2) is probable.

(B) The Superintendent may return power to the governing board for any area listed in subdivision (a) of Section 41327.1 if performance under the recovery plan for that area has been demonstrated to the satisfaction of the Superintendent.

(2) The Superintendent has approved all of the recovery plans referred to in subdivision (a) of Section 41327 and the County Office Fiscal Crisis and Management Assistance Team completes the improvement plans specified in Section 41327.1 and has completed a minimum of two reports identifying the district's progress in implementing the improvement plans.

(3) The administrator certifies that all necessary collective bargaining agreements have been negotiated and ratified, and that the agreements are consistent with the terms of the recovery plans.

(4) The district has completed all reports required by the Superintendent and the administrator.

(5) The Superintendent determines that future compliance by the school district with the recovery plans approved pursuant to paragraph (2) is probable.

(f) When the conditions stated in subdivision (e) have been met, and at least 60 days after the Superintendent of Public Instruction has notified the Legislature, the Department of Finance, the Controller, and

the county superintendent of schools that he or she expects the conditions prescribed pursuant to this section to be met, the school district governing board shall regain all of its legal rights, duties, and powers, except for the powers held by the trustee provided for pursuant to Article 2 (commencing with Section 41320). The Superintendent shall appoint a trustee under Section 41320.1 to monitor and review the operations of the district until the conditions of subdivision (b) of that section have been met.

(g) Notwithstanding subdivision (f), if the district violates any provision of the recovery plans approved by the Superintendent pursuant to this article within five years after the trustee appointed pursuant to Section 41320.1 is removed, the Superintendent may reassume, either directly or through an administrator appointed in accordance with this section, all of the legal rights, duties, and powers of the governing board of the district. The Superintendent shall return to the school district governing board all of its legal rights, duties, and powers reassumed under this subdivision when he or she determines that future compliance with the approved recovery plans is probable, or after a period of one year, whichever occurs later.

(h) Article 2 (commencing with Section 41320) shall apply except as otherwise specified in this article.

(i) It is the intent of the Legislature that the legislative budget subcommittees annually conduct a review of each qualifying school district that includes an evaluation of the financial condition of the district, the impact of the recovery plans upon the district's educational program, and the efforts made by the state-appointed administrator to obtain input from the community and the governing board of the district.

(j) The district superintendent is entitled to a due process hearing for purposes of determining final compensation. The final compensation of the district superintendent shall be between zero and six times his or her monthly salary. The outcome of the due process hearing shall be reported to the Superintendent of Public Instruction and the public. The information provided to the public shall explain the rationale for the compensation.

(k) (1) When the Superintendent assumes control over a school district pursuant to subdivision (b), he or she shall, in consultation with the County Office Fiscal Crisis and Management Assistance Team, review the fiscal oversight of the district by the county superintendent of schools. The Superintendent may consult with other fiscal experts, including other county superintendents of schools and regional fiscal teams in conducting this review.

(2) Within three months of assuming control over a qualifying district, the Superintendent shall report his or her findings to the Legislature and shall provide a copy of that report to the Department of

Finance. This report shall include findings as to fiscal oversight actions that were or were not taken and may include recommendations as to an appropriate legislative response to improve fiscal oversight.

(3) If after performing the duties described in paragraphs (1) and (2), the Superintendent determines that the county superintendent failed to carry out his or her responsibilities for fiscal oversight as required by this code, the Superintendent may exercise the authority of the county superintendent of schools who has oversight responsibilities for a qualifying school district. If the Superintendent finds, based on the report required in paragraph (1), that the county superintendent failed to appropriately take into account particular types of indicators of financial distress or failed to take appropriate remedial actions in the qualifying district, the Superintendent shall further investigate whether the county superintendent failed to take into account those indicators or similarly failed to take appropriate actions in other districts with negative or qualified certifications and shall provide an additional report on the fiscal oversight practices of the county superintendent to the appropriate policy and fiscal committees of each house of the Legislature and the Department of Finance.

SEC. 6. Section 41326.1 of the Education Code is amended to read:

41326.1. (a) Within 30 days of assuming authority, an administrator who has control over a school district pursuant to subdivision (b) shall discuss options for resolving the fiscal problems of the district with all of the following groups and shall consider, on a monthly basis, or more frequently if so desired by the administrator, information from one or more of the following groups:

(1) The governing board of the school district.

(2) Any advisory council of the school district.

(3) Any parent-teacher organization of the school district.

(4) Representatives from the community in which the school district is located.

(5) The district administrative team.

(6) The County Office Fiscal Crisis and Management Assistance Team.

(7) Representatives of employee bargaining units.

(8) The county superintendent of schools.

(b) This section applies to a school district that has an administrator pursuant to Section 41326 and is under the control of the administrator for purposes of demonstrating academic progress pursuant to a plan of action to improve the school district.

SEC. 7. Section 41327 of the Education Code is amended to read:

41327. (a) In accordance with timelines, instructions, and a format established by the Superintendent, the state-appointed administrator shall prepare or obtain the following reports and plans:

(1) A management review and recovery plan.

(2) A multiyear financial recovery plan. The multiyear financial recovery plan shall include a plan, to be submitted annually on or before July 1, to repay to the state any and all loans owed by the district. Pursuant to the multiyear financial recovery plan, the repayment by the district of any state loans shall comply with all of the following, notwithstanding any provision of Article 2 (commencing with Section 41320):

(A) The loan or loans shall be repaid over a period of no more than 20 years following the initial disbursement of moneys under a loan as described in subdivision (a) of Section 41326. The repayment of the loan or loans shall commence not later than the fiscal year following the year in which the loan described in that subdivision is made.

(B) Interest shall accrue on the loan or loans as of the date the funds are received, at the average annual investment rate of the state's pooled money investment account.

(3) During the period of service by the state-appointed administrator, an annual report on the financial condition of the district, including, but not necessarily limited to, all of the following information:

(A) Specific actions taken to reduce district expenditures or increase income to the district, and the amount of the resulting cost savings and increases in income.

(B) A copy of the adopted district budget for the current fiscal year.

(C) The amount of the district budgetary reserve.

(D) The status of employee contracts.

(E) Any obstacles to the implementation of the recovery plans described in paragraphs (1) and (2).

(b) Each of the reports or plans required under this section, or under any other provision of law that requires the district to prepare reports or plans, shall be submitted to the Superintendent of Public Instruction for approval, after his or her consideration of comments and recommendations of the county superintendent of schools. The Superintendent may accept and approve, for the purposes of this section, any reports or plans that were prepared by or for the district prior to the district's acceptance of a loan as described in subdivision (a) of Section 41326.

(c) With the approval of the Superintendent, the state-appointed administrator may enter into agreements on behalf of the district and, subject to any contractual obligation of the district, change any existing district rules, regulations, policies, or practices as necessary for the effective implementation of the recovery plans referred to in subdivision (a).

SEC. 8. Section 41327.1 is added to the Education Code, to read:

41327.1. (a) The State Board of Education shall adopt and may periodically update by regulation a comprehensive list of professional and legal standards that all districts are encouraged to use as a guide to conduct a good educational program and fiscal and management practices that shall be used as the basis of evaluating the improvement of qualifying districts pursuant to this article. These standards shall, at a minimum, address all of the following areas:

(1) Financial management.

(2) Pupil achievement.

(3) Personnel management.

(4) Facilities management.

(5) Community relations.

(b) If an administrator is appointed pursuant to Section 41326, the County Office Fiscal Crisis and Management Assistance Team established pursuant to Section 42127.8 shall conduct comprehensive assessments in the five areas specified in subdivision (a).

(c) After the assessments specified in subdivision (b) are completed, the Superintendent, in consultation with the County Office Fiscal Crisis and Management Assistance Team and the county superintendent of schools, shall determine, based upon the district's particular needs and circumstances, the level of improvement needed in the standards adopted pursuant to subdivision (a) before local authority will be returned pursuant to subdivision (f) of Section 41326. Based upon this determination, the County Office Fiscal Crisis and Management Assistance Team shall complete improvement plans in the five areas specified in subdivision (a) that focus on the agreed upon standards, and that are consistent with the financial improvement plan.

(d) Beginning six months after an emergency loan is approved, and every six months thereafter until local authority is returned pursuant to subdivision (f) of Section 41326, the County Office Fiscal Crisis and Management Assistance Team shall file a written status report with the appropriate fiscal and policy committees of the Legislature, the Members of the Legislature that represent the qualifying district, any advisory council of the school district, the Superintendent, the county superintendent of schools, the Director of Finance, and the Secretary for Education. The reports shall indicate the progress that the district is making in meeting the recommendations of the improvement plans developed pursuant to this section.

(e) If the County Office Fiscal Crisis and Management Assistance Team indicates in writing that it has insufficient resources to complete the comprehensive assessments, improvement plans, and progress reports required pursuant to this section, the department shall request proposals to complete these tasks, and subject to the approval of the Department of Finance, select an entity to complete the tasks assigned

to the County Office Fiscal Crisis and Management Assistance Team pursuant to this section.

SEC. 9. Section 41327.2 is added to the Education Code, to read:

41327.2. (a) The appointment of an administrator pursuant to Section 41326 does not remove any statutory rights, duties, or obligations from the county superintendent of schools. The county superintendent of schools retains the responsibility to superintend school districts under his or her jurisdiction.

(b) The county superintendent of schools shall submit reports to the Superintendent, the appropriate fiscal and policy committees of the Legislature, the Director of Finance, and the Secretary for Education subsequent to review by the county superintendent of schools of the district's budget and interim reports in accordance with subdivisions (d) and (g) of, and paragraph (3) of subdivision (i) of, Section 42127, and paragraph (2) of subdivision (a) of, and subdivision (e) of, Section 42121. These reports shall document the fiscal and administrative status of the qualifying district, particularly in regard to the implementation of fiscal and management recovery plans. Each report shall also include a determination of whether the revenue streams to the district appear to be consistent with its expenditure plan, according to the most recent data available at the time of the report. These reports are required until six months after all rights, duties, and powers are returned to the school district pursuant to this article.

SEC. 10. Section 41328 of the Education Code is amended to read:

41328. The qualifying district shall bear 100 percent of all costs associated with implementing this article, including the activities of the County Office Fiscal Crisis and Management Team or the regional team. The Superintendent shall withhold from the apportionments to be made from the State School Fund to the district the amounts due pursuant to this section. The costs referred to in this section do not include the principal and interest on the emergency apportionment, which shall be paid by the district in accordance with this article.

SEC. 11. Section 41474 of the Education Code is amended to read:

41474. Notwithstanding Sections 41471 and 41472, the school district may submit a request to the Director of Finance to have the interest rate on the remaining outstanding balance of its emergency apportionments changed to reflect the investment rate of the Pooled Money Investment Account as reported by the State Controller's office for the immediately preceding fiscal year. Upon receipt of the request, the Director of Finance shall change the interest rate pursuant to this section. A change in the interest rate does not change other terms of the repayment schedule.

SEC. 12. Section 42127 of the Education Code is amended to read:

42127. (a) On or before July 1 of each year, the governing board of each school district shall accomplish the following:

(1) Hold a public hearing on the budget to be adopted for the subsequent fiscal year. The budget to be adopted shall be prepared in accordance with Section 42126. The agenda for that hearing shall be posted at least 72 hours prior to the public hearing and shall include the location where the budget will be available for public inspection.

(2) Adopt a budget. Not later than five days after that adoption or by July 1, whichever occurs first, the governing board shall file that budget with the county superintendent of schools. That budget and supporting data shall be maintained and made available for public review. If the governing board of the district does not want all or a portion of the property tax requirement levied for the purpose of making payments for the interest and redemption charges on indebtedness as described in paragraph (1) or (2) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, the budget shall include a statement of the amount or portion for which a levy shall not be made.

(b) The county superintendent of schools may accept changes in any statement included in the budget, pursuant to subdivision (a), of the amount or portion for which a property tax levy shall not be made. The county superintendent or the county auditor shall compute the actual amounts to be levied on the property tax rolls of the district for purposes that exceed apportionments to the district pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code. Each school district shall provide all data needed by the county superintendent or the county auditor to compute the amounts. On or before August 15, the county superintendent shall transmit the amounts computed to the county auditor who shall compute the tax rates necessary to produce the amounts. On or before September 1, the county auditor shall submit the rate computed to the board of supervisors for adoption.

(c) The county superintendent of schools shall do all of the following:

(1) Examine the adopted budget to determine whether it complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets. The county superintendent shall identify, if necessary, any technical corrections that are required to be made to bring the budget into compliance with those standards and criteria.

(2) Determine whether the adopted budget will allow the district to meet its financial obligations during the fiscal year and is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments. In addition to his or her own analysis of the budget of each school district, the county superintendent of schools shall review and consider studies, reports, evaluations, or audits of the school

district that were commissioned by the district, the county superintendent, the Superintendent, and state control agencies and that contain evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. The county superintendent of schools shall either conditionally approve or disapprove a budget that does not provide adequate assurance that the district will meet its current and future obligations and resolve any problems identified in studies, reports, evaluations, or audits described in this paragraph.

(d) On or before August 15, the county superintendent of schools shall approve, conditionally approve, or disapprove the adopted budget for each school district. If a school district does not submit a budget to the county superintendent of schools, the county superintendent of schools shall, at district expense, develop a budget for that school district by September 15 and transmit that budget to the governing board of the school district. The budget prepared by the county superintendent of schools shall be deemed adopted, unless the county superintendent of schools approves any modifications made by the governing board of the school district. The approved budget shall be used as a guide for the district's priorities. The Superintendent shall review and certify the budget approved by the county. If, pursuant to the review conducted pursuant to subdivision (c), the county superintendent of schools determines that the adopted budget for a school district does not satisfy paragraph (1) or (2) of that subdivision, he or she shall conditionally approve or disapprove the budget and, not later than August 15, transmit to the governing board of the school district, in writing, his or her recommendations regarding revision of the budget and the reasons for those recommendations, including, but not limited to, the amounts of any budget adjustments needed before he or she can conditionally approve that budget. The county superintendent of schools may assign a fiscal adviser to assist the district to develop a budget in compliance with those revisions. In addition, the county superintendent of schools may appoint a committee to examine and comment on the superintendent's review and recommendations, subject to the requirement that the committee report its findings to the superintendent no later than August 20.

(e) On or before September 8, the governing board of the school district shall revise the adopted budget to reflect changes in projected income or expenditures subsequent to July 1, and to include any response to the recommendations of the county superintendent of schools, shall adopt the revised budget, and shall file the revised budget

with the county superintendent of schools. Prior to revising the budget, the governing board shall hold a public hearing regarding the proposed revisions, to be conducted in accordance with Section 42103. The revised budget and supporting data shall be maintained and made available for public review.

(f) On or before September 22, the county superintendent of schools shall provide a list to the Superintendent of Public Instruction identifying all school districts for which budgets may be disapproved.

(g) The county superintendent of schools shall examine the revised budget to determine whether it (1) complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets, (2) allows the district to meet its financial obligations during the fiscal year, (3) satisfies all conditions established by the county superintendent of schools in the case of a conditionally approved budget, and (4) is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments, and, not later than October 8, shall approve or disapprove the revised budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1, unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed and the department approves the waiver after determining that a budget review committee is not necessary. Upon the grant of a waiver, the county superintendent has the authority and responsibility provided to a budget review committee in Section 42127.3. Upon approving a waiver of the budget review committee, the department shall ensure that a balanced budget is adopted for the school district by November 30. If no budget is adopted by November 30, the Superintendent may adopt a budget for the school district. The Superintendent shall report to the Legislature and the Director of Finance by December 10 if any district, including a district that has received a waiver of the budget review committee process, does not have an adopted budget by November 30. This report shall include the reasons why a budget has not been adopted by the deadline, the steps being taken to finalize budget adoption, the date the adopted budget is anticipated, and whether the Superintendent has or will exercise his or her authority to adopt a budget for the school district.

(h) Not later than October 8, the county superintendent of schools shall submit a report to the Superintendent of Public Instruction identifying all school districts for which budgets have been disapproved or budget review committees waived. The report shall include a copy of the written response transmitted to each of those districts pursuant to subdivision (d).

(i) Notwithstanding any other provision of this section, the budget review for a school district shall be governed by paragraphs (1), (2), and (3) of this subdivision, rather than by subdivisions (e) and (g), if the governing board of the school district so elects and notifies the county superintendent in writing of that decision, not later than October 31 of the immediately preceding calendar year. On or before July 1, the governing board of a school district for which the budget review is governed by this subdivision, rather than by subdivisions (e) and (g), shall conduct a public hearing regarding its proposed budget in accordance with Section 42103.

(1) If the adopted budget of a school district is disapproved pursuant to subdivision (d), on or before September 8, the governing board of the school district, in conjunction with the county superintendent of schools, shall review the superintendent's recommendations at a regular meeting of the governing board and respond to those recommendations. The response shall include any revisions to the adopted budget and other proposed actions to be taken, if any, as a result of those recommendations.

(2) On or before September 22, the county superintendent of schools will provide a list to the Superintendent of Public Instruction identifying all school districts for which a budget may be tentatively disapproved.

(3) Not later than October 8, after receiving the response required under paragraph (1), the county superintendent of schools shall review that response and either approve or disapprove the budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1, unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed and the department approves the waiver after determining that a budget review committee is not necessary. Upon the grant of a waiver, the county superintendent has the authority and responsibility provided to a budget review committee in Section 42127.3. Upon approving a waiver of the budget review committee, the department shall ensure that a balanced budget is adopted for the school district by November 30. The Superintendent shall report to the Legislature and the Director of Finance by December 10 if any district, including a district that has received a waiver of the budget review committee process, does not have an adopted budget by November 30. This report shall include the reasons why a budget has not been adopted by the deadline, the steps being taken to finalize budget adoption, and the date the adopted budget is anticipated.

(4) Not later than 45 days after the Governor signs the annual Budget Act, the school district shall make available for public review any

revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

(j) Any school district for which the county board of education serves as the governing board is not subject to subdivisions (c) to (h), inclusive, but is governed instead by the budget procedures set forth in Section 1622.

SEC. 13. Section 42127.1 of the Education Code is amended to read:

42127.1. (a) Pursuant to subdivision (g) or (i) of Section 42127, upon the disapproval of a school district budget by the county superintendent, the county superintendent shall call for the formation of a budget review committee unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed, and the department approves the waiver after determining that a budget review committee is not necessary. Upon the grant of a waiver, the county superintendent has the authority and responsibility provided to a budget review committee in Section 42127.3. Upon approving a waiver of the budget review committee, the department shall ensure that a balanced budget is adopted for the school district by November 30. The Superintendent shall report to the Legislature and the Director of Finance by December 10 if any district, including a district that has received a waiver of the budget review committee process, does not have an adopted budget by November 30. This report shall include the reasons why a budget has not been adopted by the deadline, the steps being taken to finalize budget adoption, and the date the adopted budget is anticipated.

(b) The budget review committee shall be composed of three persons selected by the governing board of the school district from a list of candidates provided to the governing board by the Superintendent of Public Instruction. The list of candidates shall be composed of persons who have expertise in the management of a school district or county office of education. Their experience shall include, but not be limited to, the fiscal and educational aspects of local educational agency management.

(c) Notwithstanding subdivision (b) or any other provision of this article, with the approval of the Superintendent and the governing board of the school district, the county superintendent of schools may select and convene a regional review committee, consisting of persons having the expertise described in that subdivision. The regional review committee shall operate in place of the budget review committee, in accordance with the provisions of this article governing budget review committees.

(d) Members of the committee shall be reimbursed by the department for their services and associated expenses while on official business at rates established by the State Board of Education.

SEC. 14. Section 42127.6 of the Education Code is amended to read:

42127.6. (a) (1) A school district shall provide the county superintendent of schools with a copy of a study, report, evaluation, or audit that was commissioned by the district, the county superintendent, the Superintendent, and state control agencies and that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Section 42127.8. The county superintendent shall review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. If these findings are made, the county superintendent shall investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification pursuant to Section 42131. If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years or if a school district has a qualified or negative certification pursuant to Section 42131, he or she shall notify the governing board of the school district and the Superintendent in writing of that determination and the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public. The county superintendent of schools shall report to the Superintendent on the financial condition of the school district and his or her proposed remedial actions, and shall do at least one of the following, and all actions that are necessary, to ensure that the district meets its financial obligations:

(A) Assign a fiscal expert, paid for by the county superintendent, to advise the district on its financial problems.

(B) Conduct a study of the financial and budgetary conditions of the district that includes, but is not limited to, a review of internal controls. If, in the course of this review, the county superintendent determines that his or her office requires analytical assistance or expertise that is not

available through the district, he or she may employ, on a short-term basis, with the approval of the Superintendent, staff, including certified public accountants, to provide the assistance and expertise. The school district shall pay 75 percent and the county office of education shall pay 25 percent of these staff costs.

(C) Direct the school district to submit a financial projection of all fund and cash balances of the district as of June 30 of the current year and subsequent fiscal years as he or she requires.

(D) Require the district to encumber all contracts and other obligations, to prepare appropriate cashflow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.

(E) Direct the district to submit a proposal for addressing the fiscal conditions that resulted in the determination that the district may not be able to meet its financial obligations.

(F) Withhold compensation of the members of the governing board and the district superintendent for failure to provide requested financial information. This action may be appealed to the Superintendent of Public Instruction pursuant to subdivision (b).

(2) Any contract entered into by a county superintendent of schools for the purposes of this subdivision is subject to the approval of the Superintendent.

(3) An employee of a school district who provides information regarding improper governmental activity, as defined in Section 44112, is entitled to the protection provided pursuant to Article 5 (commencing with Section 44110) of Chapter 1 of Part 25.

(b) Within five days of the county superintendent making the determination specified in subdivision (a), a school district may appeal the basis of the determination, and any of the proposed actions that the county superintendent has indicated that he or she will take to further examine the financial condition of the district. The Superintendent shall sustain or deny any or all parts of the appeal within 10 days.

(c) If, after taking the actions identified in subdivision (a), the county superintendent determines that a district will be unable to meet its financial obligations for the current or subsequent fiscal year, he or she shall notify the school district governing board and the Superintendent in writing of that determination and the basis for that determination. The notification shall include the assumptions used in making the determination and shall be provided to the superintendent of the school district and parent and teacher organization of the district.

(d) Within five days of the county superintendent making the determination specified in subdivision (c), a school district may appeal that determination to the Superintendent. The Superintendent shall sustain or deny the appeal within 10 days. If the governing board of the

school district appeals the determination, the county superintendent of schools may stay any action of the governing board that he or she determines is inconsistent with the district's ability to meet its financial obligations for the current or subsequent fiscal year until resolution of the appeal by the Superintendent.

(e) If the appeal described in subdivision (d) is denied or not filed, or if the district has a negative certification pursuant to Section 42131, the county superintendent, in consultation with the Superintendent, shall take at least one of the actions described in paragraphs (1) to (5), inclusive, and all actions that are necessary to ensure that the district meets its financial obligations and shall make a report to the Superintendent about the financial condition of the district and remedial actions proposed by the county superintendent.

(1) Develop and impose, in consultation with the Superintendent and the school district governing board, a budget revision that will enable the district to meet its financial obligations in the current fiscal year.

(2) Stay or rescind any action that is determined to be inconsistent with the school district's ability to meet its obligations for the current or subsequent fiscal year. This includes any actions up to the point that the subsequent year's budget is approved by the county superintendent of schools. The county superintendent of schools shall inform the school district governing board in writing of his or her justification for any exercise of authority under this paragraph.

(3) Assist in developing, in consultation with the governing board of the school district, a financial plan that will enable the district to meet its future obligations.

(4) Assist in developing, in consultation with the governing board of the school district, a budget for the subsequent fiscal year. If necessary, the county superintendent of schools shall continue to work with the governing board of the school district until the budget for the subsequent year is adopted.

(5) As necessary, appoint a fiscal adviser to perform any or all of the duties prescribed by this section on his or her behalf.

(f) Any action taken by the county superintendent of schools pursuant to paragraph (1) or (2) of subdivision (e) shall be accompanied by a notification that shall include the actions to be taken, the reasons for the actions, and the assumptions used to support the necessity for these actions.

(g) This section does not authorize the county superintendent to abrogate any provision of a collective bargaining agreement that was entered into by a school district prior to the date upon which the county superintendent of schools assumed authority pursuant to subdivision (e).

(h) The school district shall pay 75 percent and the county office of education shall pay 25 percent of the administrative expenses incurred

pursuant to subdivision (e) or costs associated with improving the district's financial management practices. The Superintendent shall develop, and distribute to affected school districts and county offices of education, advisory guidelines regarding the appropriate amount of administrative expenses charged pursuant to this subdivision.

(i) Notwithstanding Section 42647 or 42650, or any other law, a county treasurer shall not honor any warrant if, pursuant to Sections 42127 to 42127.5, inclusive, or pursuant to this section, the county superintendent or the Superintendent, as appropriate, has disapproved that warrant or the order on school district funds for which a warrant was prepared.

(j) Effective upon the certification of the election results for a newly organized school district pursuant to Section 35763, the county superintendent of schools may exercise any of the powers and duties of this section regarding the reorganized school district and the other affected school districts until the reorganized school district becomes effective for all purposes in accordance with Article 4 (commencing with Section 35530) of Chapter 3 of Part 21.

(k) The Superintendent shall monitor the efforts of a county office of education in exercising its authority under this section and may exercise any of that authority if the Superintendent finds that the actions of the county superintendent of schools are not effective in resolving the financial problems of the school district. Upon a decision to exercise the powers of the county superintendent of schools, the county superintendent of schools is relieved of those powers assumed by the Superintendent. In addition to the actions taken by the county superintendent, the Superintendent shall take further actions to ensure the long-term fiscal stability of the district. The county office of education shall reimburse the Superintendent for all of his or her costs in exercising his or her authority under this subdivision. The Superintendent shall promptly notify the county superintendent of schools, the county board of education, the superintendent of the school district, the governing board of the school district, the appropriate policy and fiscal committees of each house of the Legislature, and the Department of Finance of his or her decision to exercise the authority of the county superintendent of schools.

SEC. 15. Section 42127.8 of the Education Code is amended to read:

42127.8. (a) The governing board provided for in subdivision (b) shall establish a unit to be known as the County Office Fiscal Crisis and Management Assistance Team. The team shall consist of persons having extensive experience in school district budgeting, accounting, data processing, telecommunications, risk management, food services, pupil transportation, purchasing and warehousing, facilities maintenance and

operation, and personnel administration, organization, and staffing. The Superintendent may appoint one employee of the department to serve on the unit. The unit shall be operated under the immediate direction of an appropriate county office of education selected jointly, in response to an application process, by the Superintendent and the Secretary for Education.

(b) The unit established under subdivision (a) shall be selected and governed by a 23-member governing board consisting of one representative chosen by the California County Superintendents Educational Services Association from each of the 11 county service regions designated by the association, 11 superintendents of school districts chosen by the Association of California School Administrators from each of the 11 county service regions, and one representative from the State Department of Education chosen by the Superintendent of Public Instruction. The governing board of the County Office Fiscal Crisis and Management Assistance Team shall select a county superintendent of schools to chair the unit.

(c) The Superintendent may request the unit to provide the assistance described in subdivision (b) of Section 1624, Section 1630, Section 33132, subdivision (b) of Section 42127.3, subdivision (c) of Section 42127.6, Section 42127.9, and subdivision (a) of Section 42238.2, and to review the fiscal and administrative condition of any county office of education, school district, or charter school.

(d) In addition to the functions described in subdivision (c), the unit shall do all of the following:

(1) Provide fiscal management assistance, at the request of any school district or county office of education. Each school district or county office of education receiving that assistance shall be required to pay the onsite personnel costs and travel costs incurred by the unit for that purpose, pursuant to rates determined by the governing board established under subdivision (b). The governing board annually shall distribute rate information to each school district and county office of education.

(2) Facilitate training for members of the governing board of the school district, district and county superintendents, chief financial officers within the district, and schoolsite personnel whose primary responsibility is to address fiscal issues. Training services shall emphasize efforts to improve fiscal accountability and expand the fiscal competency of local agencies. The unit shall use state professional associations, private organizations, and public agencies to provide guidance, support, and the delivery of any training services.

(3) Facilitate fiscal management training through the 10 county service regions to county office of education staff to ensure that they develop the technical skills necessary to perform their fiduciary duty.

The governing board established pursuant to subdivision (b) shall determine the extent of the training that is necessary to comply with this paragraph.

(4) Produce a training calendar, to be disseminated semiannually to each county service region, that publicizes all of the fiscal training services that are being offered at the local, regional, and state levels.

(e) The governing board shall reserve not less than 25 percent, nor more than 50 percent, of its revenues each year for expenditure for the costs of contracts and professional services as management assistance to school districts or county superintendents of schools in which the board determines that a fiscal emergency exists.

(f) The governing board established under subdivision (b) may levy an annual assessment against each county office of education that elects to participate under this section in an amount not to exceed twenty cents ($0.20) per unit of total average daily attendance for all school districts within the county. The revenues collected pursuant to that assessment shall be applied to the expenses of the unit.

(g) The governing board established under subdivision (b) may pay to the department, from any available funds, a reasonable amount to reimburse the department for actual administrative expenses incurred in the review of the budgets and fiscal conditions of school districts and county superintendents of schools.

(h) When employed as a fiscal adviser by the department pursuant to Section 1630, employees of the unit established pursuant to subdivision (a) shall be considered employees of the department for purposes of errors and omissions liability insurance.

(i) (1) The unit shall request and review applications to establish regional teams of education finance experts throughout the state.

(2) To the extent that funding is provided for purposes of this subdivision in the annual Budget Act or through another appropriation, regional teams selected by the Superintendent, in consultation with the unit, shall provide training and technical expertise to school districts and county offices of education facing fiscal difficulties.

(3) The regional teams shall follow the standards and guidelines of and remain under the general supervision of the governing board established under subdivision (b).

(4) It is the intent of the Legislature that, to the extent possible, the regional teams be distributed geographically throughout the various regions of the state in order to provide timely, cost-effective expertise to school districts and county offices of education throughout the state.

SEC. 16. Section 3540.2 of the Government Code is amended to read:

3540.2. (a) A school district that has a qualified or negative certification pursuant to Section 42131 of the Education Code shall

allow the county office of education in which the school district is located at least 10 working days to review and comment on any proposed agreement made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The school district shall provide the county superintendent of schools with all information relevant to yield an understanding of the financial impact of that agreement.

(b) The Superintendent shall develop a format for use by the appropriate parties in generating the financial information required pursuant to subdivision (a).

(c) The county superintendent of schools shall notify the school district, the county board of education, the district superintendent, the governing board of the school district, and each parent and teacher organization of the district within those 10 days if, in his or her opinion, the agreement reviewed pursuant to subdivision (a) would endanger the fiscal well-being of the school district.

(d) A school district shall provide the county superintendent of schools, upon request, with all information relevant to provide an understanding of the financial impact of any final collective bargaining agreement reached pursuant to Section 3543.2.

(e) A county office of education, or a school district for which the county board of education serves as the governing board, that has a qualified or negative certification pursuant to Section 1240 of the Education Code shall allow the Superintendent at least 10 working days to review and comment on any proposed agreement or contract made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The county superintendent of schools shall provide the Superintendent with all information relevant to yield an understanding of the financial impact of that agreement or contract. The Superintendent shall notify the county superintendent of schools, and the county board of education within those 10 days if, in his or her opinion, the proposed agreement or contract would endanger the fiscal well-being of the county office.

SEC. 17. Section 3547.5 of the Government Code is amended to read:

3547.5. (a) Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.

(b) The superintendent of the school district and chief business official shall certify in writing that the costs incurred by the school district under the agreement can be met by the district during the term of the agreement. This certification shall be prepared in a format similar to that of the reports required pursuant to Sections 42130 and 42131 of the Education Code and shall itemize any budget revision necessary to meet the costs of the agreement in each year of its term.

(c) If a school district does not adopt all of the revisions to its budget needed in the current fiscal year to meet the costs of a collective bargaining agreement, the county superintendent of schools shall issue a qualified or negative certification for the district on the next interim report pursuant to Section 42131 of the Education Code.

SEC. 18. Section 53260 of the Government Code is amended to read:

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

(b) (1) Notwithstanding subdivision (a), if a local agency employer, including an administrator appointed by the Superintendent, terminates its contract of employment with its district superintendent of schools that local agency employer may not provide a cash or noncash settlement to its superintendent in an amount greater than the superintendent's monthly salary multiplied by zero to six if the local agency employer believes, and subsequently confirms, pursuant to an independent audit, that the superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices. The amount of the cash settlement described in this paragraph shall be determined by a hearing officer after a hearing.

(2) This subdivision applies only to a contract for employment negotiated on or after the effective date of the act that added this subdivision.

(c) The cash settlement formula described in subdivisions (a) and (b) are maximum ceiling on the amounts that may be paid by a local agency employer to an employee and is not a target or example of the amount of the cash settlement to be paid by a local agency employer to an employee in all contract termination cases.

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.

SEC. 20. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Due to the fiscal crisis currently facing this state, it is necessary that this act take effect immediately.

CHAPTER 53

An act relating to the Vallejo City Unified School District, and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 21, 2004. Filed with Secretary of State June 21, 2004.]

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

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

(a) Providing a quality education that meets the unique needs of Vallejo public school pupils is a fundamental goal that should not be jeopardized.

(b) In February 2004, the Vallejo City Unified School District became aware of a negative general fund balance for the 2002–03 fiscal year and of potential deficits in its 2003–04 budget.

(c) The Vallejo City Unified School District is projected to run out of cash in June of 2004 and, without external help, will be unable to meet current encumbered obligations.

(d) Despite reductions in district expenditures in the current year and actions taken by the governing board of the Vallejo City Unified School District to reduce the district budget for 2004–05 by more than $7.5 million, the district is projected to have a negative fund balance in the current year of more than $20 million and a projected negative fund balance at the conclusion of the 2004–05 fiscal year.

(e) The Vallejo City Unified School District needs a loan from the state in order to continue the delivery of educational services to pupils enrolled in the district.

SEC. 2. (a) It is the intent of the Legislature that the state administrator appointed pursuant to this act work with the administrators and governing board of the Vallejo City Unified School District to identify the procedures and programs that the district has implemented during the 2003–04 school year that have proven to do one or more of the following:

(1) Significantly raise pupil achievement.

(2) Improve pupil attendance.

(3) Lower pupil dropout rate.

(4) Increase parental involvement.

(5) Attract, retain, and train a quality teaching staff.

(b) It is the intent of the Legislature that these identified procedures and programs be protected, maintained, and expanded as the budget of the district allows.

SEC. 3. The Legislature finds and declares that because of the fiscal emergency in which the Vallejo City Unified School District finds itself, and in recognition of the March 31, 2004, request of the governing board of the district for a loan from the state, it is necessary that the Superintendent of Public Instruction assume control of the district in order to ensure the return to the district of fiscal solvency.

SEC. 4. (a) The Superintendent of Public Instruction shall immediately assume all of the rights, duties, and powers of the governing board of the Vallejo City Unified School District.

(b) The Superintendent of Public Instruction, in consultation with the Solano County Superintendent of Schools, shall appoint an administrator to act on behalf of the Superintendent of Public Instruction in exercising the authority described in this act. The Superintendent of Public Instruction or the state-appointed administrator may, on a short-term basis, employ at district expense any staff necessary to assist the administrator, including, but not limited to, a certified public accountant. The administrator shall have recognized expertise in management and finance. The administrator shall serve under the direction and supervision of the Superintendent of Public Instruction until terminated by the Superintendent of Public Instruction at his or her discretion. The Superintendent of Public Instruction shall consult with the Solano County Superintendent of Schools before terminating the administrator. The Superintendent of Public Instruction, operating through the administrator, may do all of the following:

(1) Implement substantial changes in the fiscal policies and practices of the Vallejo City Unified School District, including, if necessary, the filing of a petition under Chapter 9 of the federal Bankruptcy Act (11 U.S.C. Sec. 901 et seq.) for the adjustment of indebtedness of the district.

(2) Revise the educational program of the Vallejo City Unified School District to reflect realistic revenue projections, in response to the

dramatic effect of the changes in fiscal policies and practices upon educational program quality and the potential for the success of all pupils. To the extent allowed by district finances, it is the intent of the Legislature that the revised program maintain the core educational reforms that have led to districtwide improvement of academic achievement, including, but not limited to, educational reforms targeting underperforming schools and other reforms that have demonstrated measurable success.

(3) Encourage all members of the school community to accept a fair share of the burden of the fiscal recovery of the Vallejo City Unified School District.

(4) Consult, for the purposes described in this act, with the governing board of the Vallejo City Unified School District, the exclusive representatives of the employees of the district, parents, and the community.

SEC. 5. (a) (1) To facilitate the appointment of the state-appointed administrator and the employment of any necessary staff, for the purposes of this act, the Superintendent of Public Instruction is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of the Public Contract Code.

(2) The Superintendent of Public Instruction shall establish salary and benefits of the administrator, which shall be paid by the Vallejo City Unified School District.

(3) During the tenure of his or her appointment, the administrator, if otherwise an employee of the state or of the county superintendent, is an employee of the school district, but shall remain in the same retirement system under the same plan that is provided by his or her employment with the state or the office of the county superintendent. Upon the expiration or termination of the appointment, the administrator shall have the right to return to his or her former position, or to a position at substantially the same level as that position, if that former position was with the state or the office of the county superintendent. The time served in the appointment shall be counted for all purposes as if the administrator had served that time in his or her former position with the state or with the office of the county superintendent.

(b) For the period of time during which the Superintendent of Public Instruction exercises the authority described in subdivision (a) of Section 4, the governing board of the Vallejo City Unified School District shall serve as an advisory body reporting to the administrator, but has no rights, duties, or powers, and is not entitled to any stipend, benefits, or other compensation from the district.

(c) Notwithstanding any other provision of law, the administrator may, after according the employee reasonable notice and opportunity for

hearing, terminate the employment of any district superintendent of schools, or deputy, associate, or assistant superintendent of schools, or other person employed in an equivalent capacity, whose duties include overseeing, managing, or otherwise directing the fiscal and budgetary operations of the Vallejo City Unified School District, and who is employed by the Vallejo City Unified School District under a contract of employment renewed after the effective date of this act if the employee fails to document, to the satisfaction of the administrator, that before the effective date of this act he or she either advised the governing board of the district, or his or her superior, that actions contemplated or taken by the governing board could result in the fiscal insolvency of the district or took other appropriate action to avert that fiscal insolvency.

(d) With the approval of the Superintendent of Public Instruction, the administrator may enter into agreements on behalf of the school district and, subject to any contractual and statutory obligation of the school district, change any existing school district rules, regulations, policies, or practices as necessary for the effective implementation of the improvement plan specified in Section 7 of this act.

(e) The authority of the Superintendent of Public Instruction and the administrator pursuant to this act shall continue until all of the following conditions occur:

(1) Two complete fiscal years have elapsed following the appointment of the administrator or, at any time after one complete fiscal year has elapsed following that appointment, if the administrator determines, and so notifies the Superintendent of Public Instruction, that future compliance by the Vallejo City Unified School District with the improvement plan specified in Section 7 of this act is probable.

(2) The County Office Fiscal Crisis and Management Assistance Team (FCMAT) completes the improvement plan specified in Section 7 of this act.

(3) The FCMAT, after consultation with the administrator, determines that for at least the immediately previous six months the school district made substantial and sustained progress in implementation of the plans in the major functional area.

(4) The administrator certifies that all necessary collective bargaining agreements have been negotiated and ratified and that the agreements are consistent with the terms of the improvement plan specified in Section 7 of this act.

(5) The district completes all reports required by the Superintendent of Public Instruction and the administrator.

(6) The administrator certifies that the members of the school board and district personnel, as appropriate, have successfully completed the training specified in subdivision (b) of Section 7 of this act.

(7) The Superintendent of Public Instruction concurs with the assessment of the administrator and the FCMAT that future compliance by the Vallejo City Unified School District with the improvement plan described in Section 7 of this act and the multiyear financial recovery plan described in paragraph (2) of subdivision (a) of Section 41327 of the Education Code is probable.

(f) If all of the conditions specified in subdivision (e) occur, the governing board of the Vallejo City Unified School District shall regain all of its rights, duties, and powers.

(g) Notwithstanding subdivision (f), if the Vallejo City Unified School District violates any provision of the improvement plan specified in Section 7 of this act, after the governing board of the school district regains all of its rights, duties, and powers pursuant to subdivision (f), the Superintendent of Public Instruction may reassume, in accordance with this section, all of the rights, duties, and powers of the governing board of the school district. The Superintendent of Public Instruction shall subsequently return to the governing board of the school district all of its rights, duties, and powers reassumed under this subdivision if he or she determines that the conditions of subdivision (e) are satisfied.

(h) For the purposes of Article 2 (commencing with Section 41320) and Article 2.5 (commencing with Section 41325) of Chapter 3 of Part 24 of the Education Code, the administrator is a public school employer within the meaning of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

SEC. 6. The administrator shall consider, on a monthly basis, or more frequently if so desired by the administrator, information from one or more groups from each of the following categories:

(a) The governing board of the school district.

(b) Any advisory council of the school district.

(c) Any parent-teacher organization of the school district.

(d) Representatives from the community in which the school district is located.

(e) The County Office Fiscal Crisis and Management Assistance Team.

(f) The Superintendent of Public Instruction.

SEC. 7. (a) On or before November 1, 2004, the County Office Fiscal Crisis and Management Assistance Team (FCMAT) shall conduct a comprehensive assessment and prepare an improvement plan for the Vallejo City Unified School District incorporating the following five operational areas:

(1) Financial management.

(2) Pupil achievement.

(3) Personnel management.

(4) Facilities management.

(5) Community relations.

(b) The improvement plan for personnel management specified in paragraph (3) of subdivision (a) shall include, but not be limited to, the following training:

(1) Training for members of the governing board of the school district in the subjects about which members of the governing board need to have knowledge to effectively discharge their duties as board members, with specific training in the fiduciary responsibilities of a governing board member and in the financial management practices necessary for governing board members to effectively discharge their duty to oversee and monitor the budget, accounting practices, revenues, and expenditures of the school district.

(2) Training for the superintendent of the school district and all personnel with management, policymaking, and advisory responsibilities who report or would report directly to the superintendent, to ensure they have the knowledge and skills to effectively administer their areas of responsibility consistent with sound fiscal practices and the budgetary requirements of the school district.

(c) Based upon progress reports prepared pursuant to subdivision (c), the FCMAT shall recommend to the Superintendent of Public Instruction those designated functional areas of school district operation that it determines are appropriate for the governing board of the school district to assume.

(d) Commencing 30 days following the effective date of this act and in May 2005, and each six months thereafter until May 2006, the FCMAT shall file a written status report with the appropriate fiscal and policy committees of the Legislature, including any special committees created for the purpose of reviewing the reports, and with the Members of the Legislature who represent the Vallejo City Unified School District, the advisory board of the school district, the Superintendent of Public Instruction, the Director of Finance, and the Secretary for Education. The reports shall include the progress that the Vallejo City Unified School District is making in meeting the recommendations of the improvement plan developed pursuant to this section.

SEC. 8. (a) The Vallejo City Unified School District shall bear 100 percent of all costs associated with implementing this act, except for the activities of the County Office Fiscal Crisis and Management Team progress reports specified in Section 7 of this act.

(b) The Vallejo City Unified School District shall add the administrator as a covered employee of the school district for all purposes of errors and omissions liability insurance policies.

SEC. 9. (a) The sum of sixty million dollars ($60,000,000) is hereby appropriated from the General Fund to the Superintendent of

Public Instruction for apportionment to the Vallejo City Unified School District for the purpose of an emergency loan. In order to qualify for the loan, the district shall comply with Article 2 (commencing with Section 41320) and Article 2.5 (commencing with Section 41325) of Chapter 3 of Part 24 of the Education Code to the extent those provisions are consistent with the conditions specified in this act.

(b) Funds may be disbursed from the proceeds of the loan only if the administrator and the County Office Fiscal Crisis and Management Assistance Team jointly determine that the disbursement is necessary.

(c) Based on the needs of the district to meet its obligations, the Superintendent of Public Instruction may direct the Controller to disburse, on a monthly basis, specific amounts of the emergency loan before the approval of all of the conditions established by this act.

(d) For the fiscal year in which the loan moneys are disbursed and each fiscal year thereafter, the Controller, or his or her designee, shall cause an audit to be conducted of the books and accounts of the district, instead of the audit required by Section 41020 of the Education Code. At the discretion of the Controller, the audit may be conducted by the Controller, his or her designee, or an auditor selected by the county superintendent and approved by the Controller. The costs of the audit shall be paid by the district. The audits shall be performed until the Superintendent of Public Instruction, in consultation with the Controller, determines that the district is financially solvent, but may not cease being performed earlier than one year following the implementation of the plan required by Section 7 nor later than the time the emergency loan, including interest, is repaid. In addition, the Controller shall conduct quality control reviews pursuant to subdivision (c) of Section 14504.2 of the Education Code.

SEC. 10. (a) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (a) of Section 41327 of the Education Code, the Vallejo City Unified School District shall repay the emergency loan incurred pursuant to Section 9 of this act as a straight line loan amortized over a 20-year term. This amount shall be repaid by the district, plus interest calculated at a rate equal to the rate earned by the Pooled Money Investment Account on the date this act becomes effective, for a period not to exceed 20 years.

(b) If a required payment is not made within 60 days after a scheduled date, the Controller shall pay the defaulted loan payment of principal and interest by withholding that amount from the next available payment that would otherwise be made to the county treasurer on behalf of the district pursuant to Section 14041 of the Education Code. However, subject to the approval of the Department of Finance, the amount withheld may be in monthly amounts as determined by an agreement between the Vallejo City Unified School District and the Controller during the period

beginning with the next available apportionment through the month preceding the next scheduled payment.

(c) The Director of Finance may amend the payment schedule set forth in subdivision (a) if the director concludes that the amendment is warranted and is in the best interests of both the state and the Vallejo City Unified School District education program. Upon that determination, the director shall notify the Joint Legislative Budget Committee that the payment scheduled will be changed on the date that is 90 days from the date of notification if the Legislature is in session. If the 90-day period ends during a recess of the Legislature or while the Legislature is not in session, the 90-day period shall be extended until the Legislature reconvenes. Amendments to the payment schedule shall defer the unpaid portion of a repayment of the earliest fiscal year in which no other repayment is scheduled. Interest shall accrue on the unpaid portion of a repayment from the scheduled due date until the time the payment is actually made. The interest charge shall be the rate equal to the daily investment rate of the Pooled Money Investment Account on the date the pay schedule is changed.

(d) The school district may repay its loan obligation without incurring any prepayment penalties.

SEC. 11. (a) Notwithstanding Sections 17456, 17457, 17462, and 17463 of the Education Code, or any other law, from June 1, 2004, to June 30, 2007, inclusive, the Vallejo City Unified School District may sell property owned by the district and use the proceeds from the sale to reduce or retire the emergency loan provided in Section 9 of this act. The sale only of property pursuant to this subdivision is not subject to Section 17459 or 17464 of the Education Code.

(b) Notwithstanding any other provision of law, from June 1, 2004, to June 30, 2006, inclusive, the Vallejo City Unified School District is not eligible for financial hardship assistance pursuant to Article 8 (commencing with Section 17075.10) of Chapter 12.5 of Part 10 of the Education Code.

SEC. 12. The Solano County Superintendent of Schools maintains the responsibility to superintend school districts under its jurisdiction. This act does not remove any statutory or regulatory rights, duties, or obligations from the county superintendent of schools.

SEC. 13. The Department of Finance is authorized to redirect funds appropriated in Item 6110-107-0001 of Section 2.00 of the Budget Act of 2003 and from the corresponding item and section number of the Budget Act of 2004 for the purposes of funding activities of the County Office Fiscal Crisis and Management Assistance Team specified in this act.

SEC. 14. Any changes in law regarding school district audits, finance, and emergency apportionments and related matters and

processes that are enacted by Assembly Bill 2756 of the 2003–04 Regular Session apply to the Vallejo City Unified School District notwithstanding any provision of this act that is in conflict with those changes.

SEC. 15. The Legislature finds and declares that due to unique circumstances relating to the fiscal emergency in the Vallejo City Unified School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district 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.

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the fiscal emergency in which the Vallejo City Unified School District finds itself and to ensure that it meets its cash obligations for this fiscal year, it is necessary that this act take effect immediately.

CHAPTER 54

An act to amend Section 16337 of, and to add Chapter 5 (commencing with Section 16500) to Part 4 of Division 9 of, the Probate Code, relating to trusts.

[Approved by Governor June 21, 2004. Filed with Secretary of State June 22, 2004.]

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

SECTION 1. Section 16337 of the Probate Code is amended to read:

16337. A trustee may give a notice of proposed action regarding a matter governed by this chapter as provided in Chapter 5 (commencing with Section 16500). For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

SEC. 2. Chapter 5 (commencing with Section 16500) is added to Part 4 of Division 9 of the Probate Code, to read:

CHAPTER 5. NOTICE OF PROPOSED ACTION BY TRUSTEE

16500. Subject to subdivision (d) of Section 16501, a trustee may give a notice of proposed action regarding a matter governed by Chapter 2 (commencing with Section 16200) or Chapter 3 (commencing with Section 16320) as provided in this chapter. For the purpose of this chapter, a proposed action includes a course of action or a decision not to take action. This chapter does not preclude an application or assertion of any other rights or remedies available to an interested party as otherwise provided in this part regarding an action to be taken or not to be taken by the trustee.

16501. (a) The trustee who elects to provide notice pursuant to this chapter shall mail notice of the proposed action to each of the following:

(1) A beneficiary who is receiving, or is entitled to receive, income under the trust, including a beneficiary who is entitled to receive income at the discretion of the trustee.

(2) A beneficiary who would receive a distribution of principal if the trust were terminated at the time the notice is given.

(b) Notice of proposed action is not required to be given to a person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(c) A trustee is not required to provide a copy of the notice of proposed action to a beneficiary who is known to the trustee but who cannot be located by the trustee after reasonable diligence or who is unknown to the trustee.

(d) Notwithstanding any other provision of this chapter, the trustee may not use a notice of proposed action in any of the following actions:

(1) Allowance of the trustee's compensation.

(2) Allowance of compensation of the attorney for the trustee.

(3) Settlement of accounts.

(4) Preliminary and final distributions and discharge.

(5) Sale of property of the trust to the trustee or to the attorney for the trustee.

(6) Exchange of property of the trust for property of the trustee or for property of the attorney for the trustee.

(7) Grant of an option to purchase property of the trust to the trustee or to the attorney for the trustee.

(8) Allowance, payment, or compromise of a claim of the trustee, or the attorney for the trustee, against the trust.

(9) Compromise or settlement of a claim, action, or proceeding by the trust against the trustee or against the attorney for the trust.

(10) Extension, renewal, or modification of the terms of a debt or other obligation of the trustee, or the attorney for the trustee, owing to or in favor of the trust.

16502. The notice of proposed action shall state that it is given pursuant to this section and shall include all of the following:

(a) The name and mailing address of the trustee.

(b) The name and telephone number of a person who may be contacted for additional information.

(c) A description of the action proposed to be taken and an explanation of the reasons for the action.

(d) The time within which objections to the proposed action can be made, which shall be at least 45 days from the mailing of the notice of proposed action.

(e) The date on or after which the proposed action may be taken or is effective.

16503. (a) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(b) A trustee is not liable to a beneficiary for an action regarding a matter governed by this part if the trustee does not receive a written objection to the proposed action from a beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action. This subdivision does not apply to a person who is a minor or an incompetent adult at the time of receiving the notice of proposed action unless the notice is served on a guardian or conservator of the estate of the person.

(c) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding.

(d) If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

16504. This chapter does not require a trustee to use these procedures prior to taking any action.

———

CHAPTER 55

An act to amend Section 44251 of the Education Code, relating to school credentials.

[Approved by Governor June 21, 2004. Filed with Secretary of State June 22, 2004.]

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

SECTION 1. Section 44251 of the Education Code is amended to read:

44251. (a) The period for which a credential, as authorized under Section 44250 issued prior to September 1, 1985, is valid shall be as follows:

(1) For an internship credential: two years.

(2) For a preliminary credential, pending completion of the fifth year of study: five years.

(3) For a life credential: the life of the holder.

(b) The period for which a credential issued on or after September 1, 1985, as authorized under Section 44250 is valid, shall be as follows:

(1) For an internship credential, two years.

(2) For a preliminary credential, pending completion of the fifth year of study: five years.

(3) For an applicant's first clear multiple or single subject teaching credential: the life of the holder, if the holder meets the requirements of Section 44277.

(4) For any clear multiple or single subject teaching credential other than those to which paragraph (3) applies, the life of the holder.

(c) An emergency permit authorized in Section 44300 may be issued or reissued for validity periods not to exceed one year as determined by the commission.

CHAPTER 56

An act to repeal Section 18502.5 of the Health and Safety Code, relating to mobilehome parks, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 21, 2004. Filed with Secretary of State June 22, 2004.]

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

SECTION 1. Section 18502.5 of the Health and Safety Code, as amended by Chapter 107 of the Statutes of 2003, is repealed.

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

In order to ensure that funds collected by the Department of Housing and Community Development pursuant to the Mobilehome Parks Act are deposited into the Mobilehome Parks and Special Occupancy Parks Revolving Fund, it is necessary that this act take effect immediately.

CHAPTER 57

An act to amend Section 16915 of the Welfare and Institutions Code, relating to health care.

[Approved by Governor June 21, 2004. Filed with Secretary of State June 22, 2004.]

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

SECTION 1. Section 16915 of the Welfare and Institutions Code is amended to read:

16915. (a) Any county receiving an allocation pursuant to this part shall, at a minimum, report to the department all indigent health care program demographic, expenditure, and utilization data, in a manner that will provide an unduplicated count of users, as follows:

(1) The following patient demographic data:

(A) Age.

(B) Sex.

(C) Ethnicity.

(D) Family size.

(E) Monthly income.

(F) Source of income, according to the following categories:

(i) Disability income.

(ii) Employment.

(iii) Retirement.

(iv) General assistance.

(v) Other.

(G) Type of employment, according to the following categories:

(i) Agriculture.

(ii) Labor and production.
(iii) Professional and technical.
(iv) Service.
(v) Nonemployed.
(H) Payer source, according to the following categories:
(i) Private insurance.
(ii) County program.
(iii) Self-pay.
(iv) Other.
(I) ZIP Code of residence.
(2) Indigent health care expenditure data, including all of the following:
(A) Inpatient hospital services, according to the following categories:
(i) County hospital.
(ii) Contract hospital.
(iii) University teaching hospital.
(iv) Other, noncontract hospital.
(v) Diagnostic category, as defined by the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM).
(B) Outpatient services, according to the following categories:
(i) Hospital outpatient.
(ii) Freestanding community clinic.
(iii) Primary care physician.
(iv) Nonemergency services rendered in an emergency room environment.
(v) Type of service.
(C) Emergency room services, according to the following categories:
(i) Emergency services.
(ii) Emergency services which result in a hospital admission.
(iii) Emergency services, which are rendered in a noncounty, noncontract hospital and result in a transfer of the patient to a county or contract hospital.
(3) Indigent health care utilization data.
(A) Inpatient hospital services, according to the following categories:
(i) County hospital days and discharges.
(ii) Contract hospital days and discharges.
(iii) University teaching hospital days and discharges.
(iv) Other, noncontract hospital days and discharges.
(B) Outpatient services, according to the following categories:
(i) Hospital outpatient visits.
(ii) Freestanding community clinic visits.
(iii) Primary care physician visits.
(iv) Visits to a hospital emergency room for nonemergency services.
(C) Emergency room services, according to the following categories:

(i) Visits for emergency services in a county hospital.

(ii) Visits for emergency services in a contract hospital.

(iii) Visits for emergency services in a noncounty, noncontract hospital.

(iv) Visits for emergency services which result in an admission in a county hospital.

(v) Visits for emergency services which result in an admission to a contract hospital.

(vi) Visits for emergency services which result in an admission to a noncounty, noncontract hospital.

(D) Visits for emergency services which are rendered in a noncounty, noncontract hospital and result in a transfer of the patient to a county or contract hospital.

(4) Geographic location of rendered services.

(A) Inpatient hospital services, according to the following categories:

(i) County hospital.

(ii) Contract hospital.

(iii) University teaching hospital.

(iv) Other, noncontract hospital.

(B) Outpatient services, according to the following categories:

(i) Hospital outpatient.

(ii) Freestanding community clinic.

(iii) Primary care physician.

(iv) Nonemergency services rendered in an emergency room environment.

(C) Emergency room services.

(5) Expenditure and utilization data for persons with acquired immune deficiency syndrome (AIDS) and AIDS-related complex.

(A) Total number of patients.

(B) Number of inpatient users.

(C) Number of discharges.

(D) Total inpatient days.

(E) Total inpatient expenditures.

(F) Number of outpatient users.

(G) Number of outpatient visits.

(H) Total outpatient expenditures.

(I) Number of emergency room users.

(J) Number of emergency room visits.

(K) Total emergency room expenditures.

(b) Counties shall report demographic, cost and utilization data on indigent health care to the department as follows:

(1) An actual annual report no later than 360 days after the last day of the year to be reported.

(2) Counties shall maintain all patient-specific data collected through the medically indigent care reporting system for a period of 24 months after the last day of the fiscal year for which the data was collected.

(3) Reports shall be submitted on machine readable media, on $5^1/_4$ inch or $3^1/_2$ inch diskette, in the format specified by the department.

(c) Counties which enter into a contract with the department pursuant to Section 16809 and which do not operate a county hospital and which also elect to enter into a contract with the department to administer the noncounty hospital portion of the Hospital Services Account, pursuant to Section 16934.7, and the Physician Services Account, pursuant to subdivision (c) of Section 16952 are not required to report indigent health care program demographic, cost, and utilization data pursuant to this section.

(d) The department shall collect the data specified in subdivision (a) for services paid for through the hospital contract-back and physician services contract-back programs specified in Section 16934.7 and subdivision (c) of Section 16952.

(e) The data specified in subparagraphs (D), (E), (F), and (G) of paragraph (1) of subdivision (a) for services paid for with funds specified under subparagraph (A) of paragraph (1) of subdivision (b) of Section 16946 and funds administered pursuant to Article 3.5 (commencing with Section 16951) of Chapter 5 are not required to be reported to the department pursuant to this section.

CHAPTER 58

An act to amend Section 101850 of the Health and Safety Code, relating to public health.

[Approved by Governor June 21, 2004. Filed with Secretary of State June 22, 2004.]

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

SECTION 1. Section 101850 of the Health and Safety Code is amended to read:

101850. The Legislature finds and declares the following:

(a) (1) Due to the challenges facing the Alameda County Medical Center arising from changes in the public and private health industries, the Alameda County Board of Supervisors has determined that a transfer of governance of the Alameda County Medical Center to an independent governing body, a hospital authority, is needed to improve the efficiency, effectiveness, and economy of the community health services provided

at the medical center. The board of supervisors has further determined that the creation of an independent hospital authority strictly and exclusively dedicated to the management, administration, and control of the medical center, in a manner consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code, is the best way to fulfill its commitment to the medically indigent, special needs, and general populations of Alameda County. To accomplish this, it is necessary that the board of supervisors be given authority to create a hospital authority. Because there is no general law under which this authority could be formed, the adoption of a special act and the formation of a special authority is required.

(2) The following definitions shall apply for purposes of this section:

(A) ''The county'' means the County of Alameda.

(B) ''Governing board'' means the governing body of the hospital authority.

(C) ''Hospital authority'' means the separate public agency established by the Board of Supervisors of Alameda County to manage, administer, and control the Alameda County Medical Center.

(D) ''Medical center'' means the Alameda County Medical Center.

(b) The board of supervisors of the county may, by ordinance, establish a hospital authority separate and apart from the county for the purpose of effecting a transfer of the management, administration, and control of the medical center in accordance with Section 14000.2 of the Welfare and Institutions Code. A hospital authority established pursuant to this chapter shall be strictly and exclusively dedicated to the management, administration, and control of the medical center within parameters set forth in this chapter, and in the ordinance, bylaws, and contracts adopted by the board of supervisors which shall not be in conflict with this chapter, Section 1442.5 of this code, or Section 17000 of the Welfare and Institutions Code.

(c) A hospital authority established pursuant to this chapter shall be governed by a board that is appointed, both initially and continually, by the Board of Supervisors of the County of Alameda. This hospital authority governing board shall reflect both the expertise necessary to maximize the quality and scope of care at the medical center in a fiscally responsible manner and the diverse interest that the medical center serves. The enabling ordinance shall specify the membership of the hospital authority governing board, the qualifications for individual members, the manner of appointment, selection, or removal of governing board members, their terms of office, and all other matters that the board of supervisors deems necessary or convenient for the conduct of the hospital authority's activities.

(d) The mission of the hospital authority shall be the management, administration, and other control, as determined by the board of

supervisors, of the group of public hospitals, clinics, and programs that comprise the medical center, in a manner that ensures appropriate, quality, and cost effective medical care as required of counties by Section 17000 of the Welfare and Institutions Code, and, to the extent feasible, other populations, including special populations in Alameda County.

(e) The board of supervisors shall adopt bylaws for the medical center that sets forth those matters, related to the operation of the medical center by the hospital authority, that the board of supervisors deems necessary and appropriate. The bylaws shall become operative upon approval by a majority vote of the board of supervisors. Any changes or amendments to the bylaws shall be by majority vote of the board of supervisors.

(f) The hospital authority created and appointed pursuant to this section is a duly constituted governing body within the meaning of Section 1250 and Section 70035 of Title 22 of the California Code of Regulations as currently written or subsequently amended.

(g) Unless otherwise provided by the board of supervisors by way of resolution, the hospital authority is empowered, or the board of supervisors is empowered on behalf of the hospital authority, to apply as a public agency for one or more licenses for the provision of health care pursuant to statutes and regulations governing licensing as currently written or subsequently amended.

(h) In the event of a change of license ownership, the governing body of the hospital authority shall comply with the obligations of governing bodies of general acute care hospitals generally as set forth in Section 70701 of Title 22 of the California Code of Regulations, as currently written or subsequently amended, as well as the terms and conditions of the license. The hospital authority shall be the responsible party with respect to compliance with these obligations, terms, and conditions.

(i) (1) Any transfer by the county to the hospital authority of the administration, management, and control of the medical center, whether or not the transfer includes the surrendering by the county of the existing general acute care hospital license and corresponding application for a change of ownership of the license, shall not affect the eligibility of the county, or in the case of a change of license ownership, the hospital authority, to do any of the following:

(A) Participate in, and receive allocations pursuant to, the California Healthcare for the Indigent Program (CHIP).

(B) Receive supplemental reimbursements from the Emergency Services and Supplemental Payments Fund created pursuant to Section 14085.6 of the Welfare and Institutions Code.

(C) Receive appropriations from the Medi-Cal Inpatient Payment Adjustment Fund without relieving the county of its obligation to make intergovernmental transfer payments related to the Medi-Cal Inpatient

Payment Adjustment Fund pursuant to Section 14163 of the Welfare and Institutions Code.

(D) Receive Medi-Cal capital supplements pursuant to Section 14085.5 of the Welfare and Institutions Code.

(E) Receive any other funds that would otherwise be available to a county hospital.

(2) Any transfer described in paragraph (1) shall not otherwise disqualify the county, or in the case of a change in license ownership, the hospital authority, from participating in any of the following:

(A) Other funding sources either specific to county hospitals or county ambulatory care clinics or for which there are special provisions specific to county hospitals or to county ambulatory care clinics.

(B) Funding programs in which the county, on behalf of the medical center and the Alameda County Health Care Services Agency, had participated prior to the creation of the hospital authority, or would otherwise be qualified to participate in had the hospital authority not been created, and administration, management, and control not been transferred by the county to the hospital authority, pursuant to this chapter.

(j) A hospital authority created pursuant to this chapter shall be a legal entity separate and apart from the county and shall file the statement required by Section 53051 of the Government Code. The hospital authority shall be a government entity separate and apart from the county, and shall not be considered to be an agency, division, or department of the county. The hospital authority shall not be governed by, nor be subject to, the charter of the county and shall not be subject to policies or operational rules of the county, including, but not limited to, those relating to personnel and procurement.

(k) (1) Any contract executed by and between the county and the hospital authority shall provide that liabilities or obligations of the hospital authority with respect to its activities pursuant to the contract shall be the liabilities or obligations of the hospital authority, and shall not become the liabilities or obligations of the county.

(2) Any liabilities or obligations of the hospital authority with respect to the liquidation or disposition of the hospital authority's assets upon termination of the hospital authority shall not become the liabilities or obligations of the county.

(3) Any obligation of the hospital authority, statutory, contractual, or otherwise, shall be the obligation solely of the hospital authority and shall not be the obligation of the county or the state.

(*l*) (1) Notwithstanding any other provision of this section, any transfer of the administration, management, or assets of the medical center, whether or not accompanied by a change in licensing, shall not relieve the county of the ultimate responsibility for indigent care

pursuant to Section 17000 of the Welfare and Institutions Code or any obligation pursuant to Section 1442.5 of this code.

(2) Any contract executed by and between the county and the hospital authority shall provide for the indemnification of the county by the hospital authority for liabilities as specifically set forth in the contract, except that the contract shall include a provision that the county shall remain liable for its own negligent acts.

(3) Indemnification by the hospital authority shall not be construed as divesting the county from its ultimate responsibility for compliance with Section 17000 of the Welfare and Institutions Code.

(m) Notwithstanding the provisions of this section relating to the obligations and liabilities of the hospital authority, a transfer of control or ownership of the medical center shall confer onto the hospital authority all the rights and duties set forth in state law with respect to hospitals owned or operated by a county.

(n) (1) A transfer of the maintenance, operation, and management or ownership of the medical center to the hospital authority shall comply with the provisions of Section 14000.2 of the Welfare and Institutions Code.

(2) A transfer of maintenance, operation, and management or ownership to the hospital authority may be made with or without the payment of a purchase price by the hospital authority and otherwise upon the terms and conditions that the parties may mutually agree, which terms and conditions shall include those found necessary by the board of supervisors to ensure that the transfer will constitute an ongoing material benefit to the county and its residents.

(3) A transfer of the maintenance, operation, and management to the hospital authority shall not be construed as empowering the hospital authority to transfer any ownership interest of the county in the medical center except as otherwise approved by the board of supervisors.

(o) The board of supervisors shall retain control over the use of the medical center physical plant and facilities except as otherwise specifically provided for in lawful agreements entered into by the board of supervisors. Any lease agreement or other agreement between the county and the hospital authority shall provide that county premises shall not be sublet without the approval of the board of supervisors.

(p) The statutory authority of a board of supervisors to prescribe rules that authorize a county hospital to integrate its services with those of other hospitals into a system of community service that offers free choice of hospitals to those requiring hospital care, as set forth in Section 14000.2 of the Welfare and Institutions Code, shall apply to the hospital authority upon a transfer of maintenance, operation, and management or ownership of the medical center by the county to the hospital authority.

(q) The hospital authority shall have the power to acquire and possess real or personal property and may dispose of real or personal property other than that owned by the county, as may be necessary for the performance of its functions. The hospital authority shall have the power to sue or be sued, to employ personnel, and to contract for services required to meet its obligations.

(r) Any agreement between the county and the hospital authority shall provide that all existing services provided by the medical center continue to be provided to the county through the medical center subject to the policy of the county and consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code.

(s) A hospital authority to which the maintenance, operation, and management or ownership of the medical center is transferred shall be a ''district'' within the meaning set forth in the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). Employees of a hospital authority are eligible to participate in the County Employees Retirement System to the extent permitted by law.

(t) Members of the governing board of the hospital authority shall not be vicariously liable for injuries caused by the act or omission of the hospital authority to the extent that protection applies to members of governing boards of local public entities generally under Section 820.9 of the Government Code.

(u) The hospital authority shall be a public agency subject to the Myers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code).

(v) Any transfer of functions from county employee classifications to a hospital authority established pursuant to this section shall result in the recognition by the hospital authority of the employee organization that represented the classifications performing those functions at the time of the transfer.

(w) (1) In exercising its powers to employ personnel, as set forth in subdivision (p), the hospital authority shall implement, and the board of supervisors shall adopt, a personnel transition plan. The personnel transition plan shall require all of the following:

(A) Ongoing communications to employees and recognized employee organizations regarding the impact of the transition on existing medical center employees and employee classifications.

(B) Meeting and conferring on all of the following issues:

(i) The timeframe for which the transfer of personnel shall occur. The timeframe shall be subject to modification by the board of supervisors as appropriate, but in no event shall it exceed one year from the effective date of transfer of governance from the board of supervisors to the hospital authority.

(ii) A specified period of time during which employees of the county impacted by the transfer of governance may elect to be appointed to vacant positions with the Alameda County Health Care Services Agency for which they have tenure.

(iii) A specified period of time during which employees of the county impacted by the transfer of governance may elect to be considered for reinstatement into positions with the county for which they are qualified and eligible.

(iv) Compensation for vacation leave and compensatory leave accrued while employed with the county in a manner that grants affected employees the option of either transferring balances or receiving compensation to the degree permitted employees laid off from service with the county.

(v) A transfer of sick leave accrued while employed with the county to hospital authority employment.

(vi) The recognition by the hospital authority of service with the county in determining the rate at which vacation accrues.

(vii) The possible preservation of seniority, pensions, health benefits, and other applicable accrued benefits of employees of the county impacted by the transfer of governance.

(2) Nothing in this subdivision shall be construed as prohibiting the hospital authority from determining the number of employees, the number of full-time equivalent positions, the job descriptions, and the nature and extent of classified employment positions.

(3) Employees of the hospital authority are public employees for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code relating to claims and actions against public entities and public employees.

(x) Any hospital authority created pursuant to this section shall be bound by the terms of the memorandum of understanding executed by and between the county and health care and management employee organizations that is in effect as of the date this legislation becomes operative in the county. Upon the expiration of the memorandum of understanding, the hospital authority shall have sole authority to negotiate subsequent memorandums of understanding with appropriate employee organizations. Subsequent memorandums of understanding shall be approved by the hospital authority.

(y) The hospital authority created pursuant to this section may borrow from the county and the county may lend the hospital authority funds or issue revenue anticipation notes to obtain those funds necessary to operate the medical center and otherwise provide medical services.

(z) The hospital authority shall be subject to state and federal taxation laws that are applicable to counties generally.

(aa) The hospital authority, the county, or both, may engage in marketing, advertising, and promotion of the medical and health care services made available to the community at the medical center.

(bb) The hospital authority shall not be a ''person'' subject to suit under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code).

(cc) Notwithstanding Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code related to incompatible activities, no member of the hospital authority administrative staff shall be considered to be engaged in activities inconsistent and incompatible with his or her duties as a result of employment or affiliation with the county.

(dd) (1) The hospital authority may use a computerized management information system in connection with the administration of the medical center.

(2) Information maintained in the management information system or in other filing and records maintenance systems that is confidential and protected by law shall not be disclosed except as provided by law.

(3) The records of the hospital authority, whether paper records, records maintained in the management information system, or records in any other form, that relate to trade secrets or to payment rates or the determination thereof, or which relate to contract negotiations with providers of health care, shall not be subject to disclosure pursuant to the California Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted shall be subject to this same exemption. The information, if compelled pursuant to an order of a court of competent jurisdiction or administrative body in a manner permitted by law, shall be limited to in-camera review, which, at the discretion of the court, may include the parties to the proceeding, and shall not be made a part of the court file unless sealed.

(ee) (1) Notwithstanding any other law, the governing board may order that a meeting held solely for the purpose of discussion or taking action on hospital authority trade secrets, as defined in subdivision (d) of Section 3426.1 of the Civil Code, shall be held in closed session. The requirements of making a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description devoid of the information constituting the trade secret.

(2) The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved

in the closed session that are provided to persons who have made the timely or standing request.

(3) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(ff) Open sessions of the hospital authority shall constitute official proceedings authorized by law within the meaning of Section 47 of the Civil Code. The privileges set forth in that section with respect to official proceedings shall apply to open sessions of the hospital authority.

(gg) The hospital authority shall be a public agency for purposes of eligibility with respect to grants and other funding and loan guarantee programs. Contributions to the hospital authority shall be tax deductible to the extent permitted by state and federal law. Nonproprietary income of the hospital authority shall be exempt from state income taxation.

(hh) Contracts by and between the hospital authority and the state and contracts by and between the hospital authority and providers of health care, goods, or services may be let on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(ii) (1) Provisions of the Evidence Code, the Government Code, including the Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), the Civil Code, the Business and Professions Code, and other applicable law pertaining to the confidentiality of peer review activities of peer review bodies shall apply to the peer review activities of the hospital authority. Peer review proceedings shall constitute an official proceeding authorized by law within the meaning of Section 47 of the Civil Code and those privileges set forth in that section with respect to official proceedings shall apply to peer review proceedings of the hospital authority. If the hospital authority is required by law or contractual obligation to submit to the state or federal government peer review information or information relevant to the credentialing of a participating provider, that submission shall not constitute a waiver of confidentiality. The laws pertaining to the confidentiality of peer review activities shall be together construed as extending, to the extent permitted by law, the maximum degree of protection of confidentiality.

(2) Notwithstanding any other law, Section 1461 shall apply to hearings on the reports of hospital medical audit or quality assurance committees.

(jj) The hospital authority shall carry general liability insurance to the extent sufficient to cover its activities.

(kk) In the event the board of supervisors determines that the hospital authority should no longer function for the purposes as set forth in this chapter, the board of supervisors may, by ordinance, terminate the

activities of the hospital authority and expire the hospital authority as an entity.

(*ll*) A hospital authority which is created pursuant to this section but which does not obtain the administration, management, and control of the medical center or which has those duties and responsibilities revoked by the board of supervisors shall not be empowered with the powers enumerated in this section.

(mm) (1) The county shall establish baseline data reporting requirements for the medical center consistent with the Medically Indigent Health Care Reporting System (MICRS) program established pursuant to Section 16910 of the Welfare and Institutions Code and shall collect that data for at least one year prior to the final transfer of the medical center to the hospital authority established pursuant to this chapter. The baseline data shall include, but not be limited to, all of the following:

(A) Inpatient days by facility by quarter.

(B) Outpatient visits by facility by quarter.

(C) Emergency room visits by facility by quarter.

(D) Number of unduplicated users receiving services within the medical center.

(2) Upon transfer of the medical center, the county shall establish baseline data reporting requirements for each of the medical center inpatient facilities consistent with data reporting requirements of the Office of Statewide Health Planning and Development, including, but not limited to, monthly average daily census by facility for all of the following:

(A) Acute care, excluding newborns.

(B) Newborns.

(C) Skilled nursing facility, in a distinct part.

(3) From the date of transfer of the medical center to the hospital authority, the hospital authority shall provide the county with quarterly reports specified in paragraphs (1) and (2) and any other data required by the county. The county, in consultation with health care consumer groups, shall develop other data requirements that shall include, at a minimum, reasonable measurements of the changes in medical care for the indigent population of Alameda County that result from the transfer of the administration, management, and control of the medical center from the county to the hospital authority.

(nn) A hospital authority established pursuant to this section shall comply with the requirements of Sections 53260 and 53261 of the Government Code.

———

CHAPTER 59

An act to amend Section 6929 of the Family Code, relating to minors.

[Approved by Governor June 23, 2004. Filed with Secretary of State June 24, 2004.]

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

SECTION 1. Section 6929 of the Family Code is amended to read:

6929. (a) As used in this section:

(1) ''Counseling'' means the provision of counseling services by a provider under a contract with the state or a county to provide alcohol or drug abuse counseling services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or pursuant to Division 10.5 (commencing with Section 11750) of the Health and Safety Code.

(2) ''Drug or alcohol'' includes, but is not limited to, any substance listed in any of the following:

(A) Section 380 or 381 of the Penal Code.

(B) Division 10 (commencing with Section 11000) of the Health and Safety Code.

(C) Subdivision (f) of Section 647 of the Penal Code.

(3) ''LAAM'' means levoalphacetylmethadol as specified in paragraph (10) of subdivision (c) of Section 11055 of the Health and Safety Code.

(4) ''Professional person'' means a physician and surgeon, registered nurse, psychologist, clinical social worker, marriage and family therapist, marriage and family therapist registered intern when appropriately employed and supervised pursuant to subdivision (f) of Section 4980.40 of the Business and Professions Code, psychological assistant when appropriately employed and supervised pursuant to Section 2913 of the Business and Professions Code, or associate clinical social worker when appropriately employed and supervised pursuant to Section 4996.18 of the Business and Professions Code.

(b) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem.

(c) The treatment plan of a minor authorized by this section shall include the involvement of the minor's parent or guardian, if appropriate, as determined by the professional person or treatment facility treating the minor. The professional person providing medical care or counseling to a minor shall state in the minor's treatment record whether and when the professional person attempted to contact the minor's parent or guardian, and whether the attempt to contact the parent

or guardian was successful or unsuccessful, or the reason why, in the opinion of the professional person, it would not be appropriate to contact the minor's parent or guardian.

(d) The minor's parent or guardian is not liable for payment for any care provided to a minor pursuant to this section, except that if the minor's parent or guardian participates in a counseling program pursuant to this section, the parent or guardian is liable for the cost of the services provided to the minor and the parent or guardian.

(e) This section does not authorize a minor to receive replacement narcotic abuse treatment, in a program licensed pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, without the consent of the minor's parent or guardian.

(f) It is the intent of the Legislature that the state shall respect the right of a parent or legal guardian to seek medical care and counseling for a drug- or alcohol-related problem of a minor child when the child does not consent to the medical care and counseling, and nothing in this section shall be construed to restrict or eliminate this right.

(g) Notwithstanding any other provision of law, in cases where a parent or legal guardian has sought the medical care and counseling for a drug- or alcohol-related problem of a minor child, the physician shall disclose medical information concerning the care to the minor's parent or legal guardian upon his or her request, even if the minor child does not consent to disclosure, without liability for the disclosure.

CHAPTER 60

An act to amend Section 6 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), relating to county water authorities.

[Approved by Governor June 23, 2004. Filed with Secretary of State June 24, 2004.]

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

SECTION 1. Section 6 of the County Water Authority Act (Chapter 545 of the Statutes of 1943) is amended to read:

Sec. 6. (a) All powers, privileges, and duties vested in or imposed upon any authority incorporated under this act shall be exercised and performed by and through a board of directors. The exercise of any and all executive, administrative, and ministerial powers may be delegated by the board of directors to any of the offices created by this act or by the board of directors acting under this act.

(b) The board of directors shall consist of at least one representative from each public agency, the area of which is within the authority. The representatives shall be designated and appointed by the chief executive officers of those public agencies, respectively, with the consent and approval of the legislative bodies of the public agencies, respectively. Any member of the governing body of a member agency may be appointed by that member agency to the board of the authority to serve as the agency's representative. A majority of the members of the governing body of an agency may not be appointed by the agency to serve as representatives on the board of the authority, and, for a member agency that is not a water district, only one of the representatives of that agency may be a member of the governing body of the agency. Any director holding dual offices shall not vote upon any contract between a county water authority and the member public agency he or she represents on the authority's board. As used in this subdivision, ''water district'' has the same meaning as in subdivision (a) of Section 10.

(c) Members of the board of directors shall hold office for a term of six years, and until their successors are appointed and qualified. However, the terms of the members of the first board shall be determined by lot so that the terms of not less than one-half of the members shall be three years and the terms of the remainder shall be six years. Every member shall be subject to recall by the voters of the public agency from which that member is appointed, in accordance with the recall provisions of the freeholders' charter or other law applicable to the public agency. Notwithstanding that representatives are appointed for a fixed term of years, members of the board of directors serve at the will of the governing body of the public agency from which the member is appointed and may be removed by a majority vote of the governing body without a showing of good cause.

(d) In addition to one representative, any public agency may, at its option, designate and appoint one additional representative for each full 5 percent of the assessed value of property taxable for authority purposes which is within the public agency. However, the term of office of any representative shall not be changed or terminated by reason of any future change in the assessed value of property within any member agency.

(e) Each member of the board of directors shall be entitled to vote on all actions coming before the board and shall be entitled to cast one vote for each five million dollars ($5,000,000), or major fractional part thereof, of the total financial contribution paid to the authority that is attributable to the public agency of which the member is a representative provided that no public agency shall have votes that exceed the number of the total votes of all the other public agencies. A public agency with more than one representative shall have the option, by ordinance, to either require its representatives to cast all of that agency's votes as a

unit, as a majority of the representatives present shall determine, or to entitle each such representative to cast an equal share of the total vote of such agency. A copy of the ordinance shall be delivered to the secretary of the board of directors. The affirmative votes of members representing more than 50 percent of the number of votes of all the members shall be necessary, and except as herein provided, sufficient to carry any action coming before the board of directors. If the public agency member having the largest total financial contribution to the authority has more than 38 percent of the total financial contribution to the authority, the affirmative votes of members representing more than 55 percent of the number of votes of all the members shall be necessary, except as herein provided, to carry any action coming before the board of directors. Any meeting may be adjourned, continued, or recessed from day to day or from time to time, by vote of the director or directors present, regardless of the number of directors present.

(f) For the purposes of this section, ''total financial contribution'' includes all amounts paid in taxes, assessments, fees, and charges to or on behalf of the authority with respect to property located within the boundaries of member public agencies, including, but not limited to, standby charges, capacity charges, readiness to serve charges, connection and maintenance fees, annexation fees and charges for water delivered to member public agencies by the authority excluding the cost of treatment for the water. The total financial contribution shall be determined by the board of directors at the end of each fiscal year. Allocation of voting power shall be reestablished by the board of directors on January 1 of each year based upon the calculation determined for the previous fiscal year.

(g) Subject to confirmation by his or her public agency, a member of the board of directors may designate another member of the board of directors to vote in his or her absence. The designation and the confirmation shall be by a written instrument filed with the authority. If a director will be absent and wishes the designee to cast the vote, a written notice shall be filed with the secretary of the board of directors. If the notice is not received by the authority, the vote of the absent director will not be counted. The designation, confirmation, and notices shall be maintained on file with the authority. The designation may be changed from time to time with the confirmation of the representative's agency. The designation shall not direct how the absent representative's vote shall be cast on any matter. Directors from a public agency represented by more than one director shall be deemed confirmed as designated representatives to vote for absent directors from that public agency. This section does not apply to a public agency that has exercised the option under subdivision (e) to cast all of that agency's votes as a unit.

(h) Notwithstanding subdivision (f), the total financial contribution and the vote of each member public agency of the San Diego County Water Authority as of July 1, 1997, shall be as follows:

AGENCY	Total Financial Contribution July 1, 1997	VOTES
Carlsbad Municipal Water District	$129,787,887	25.96
City of Del Mar	13,712,188	2.74
City of Escondido	128,929,059	25.78
Fallbrook Public Utilities District	116,801,107	23.36
Helix Water District	356,506,629	71.30
National City	45,046,563	9.01
City of Oceanside	192,690,117	38.53
Olivenhain Municipal Water District	73,733,684	14.75
Otay Water District	146,294,367	29.26
Padre Dam Municipal Water District	142,768,644	28.55
Pendleton Military Res.	10,921,265	2.18
City of Poway	82,602,257	16.52
Rainbow Municipal Water District	194,841,500	38.96
Ramona Municipal Water District	65,220,318	13.04
Rincon Del Diablo Municipal Water District	69,024,271	13.80
City of San Diego	1,864,642,414	372.97
San Dieguito Water District	51,831,643	10.37
Santa Fe Irrigation District	64,860,359	12.97
South Bay Irrigation District	139,063,067	27.81
Vallecitos Water District	64,994,093	13.00
Valley Center Municipal Water District	243,877,685	48.77
Vista Irrigation District	118,493,448	23.70
Yuima Municipal Water District	15,146,776	3.03
TOTALS:	$4,331,789,341	866.36

(i) The total financial contribution for the San Diego County Water Authority shall be determined by the board of directors as of the end of each fiscal year by adding the total financial contribution of each agency for the fiscal year to the totals provided for in subdivision (h) establishing the total financial contribution as of July 1, 1997. Allocation of voting power shall be reestablished by the board of directors to be effective on January 1 of each year based upon the calculation determined for the previous fiscal year. In addition to the

definition in subdivision (f), ''total financial contribution'' shall also include all amounts paid in taxes, assessments, fees, and charges paid to or on behalf of the Metropolitan Water District of Southern California with respect to property located within the boundaries of member public agencies including, but not limited to, standby charges, capacity charges, readiness to serve charges, connection and maintenance fees, annexation fees, and charges for water sold to member public agencies by the authority excluding the cost of treatment for the water.

(j) Members of the first board of directors so constituted shall convene at the call of the clerk of the board of supervisors in the meeting room of the board of supervisors at the county seat of the county, and immediately upon convening, the board of directors shall elect from its membership a chairperson, a vice chairperson, and a secretary, who shall serve for a period of two years, or until their respective successors are elected and qualified.

(k) A quorum necessary for the transaction of business at any meeting of the board of directors exists whenever there are present at the meeting a majority of the membership of the board of directors that includes at least one-half of the number of representatives of each public agency member having more than six representatives serving on the board of directors. Designees appointed pursuant to subdivision (g) shall not be considered ''present'' for the purposes of establishing a quorum. However, any regular or special meeting of the board of directors at which a quorum is not present may be continued from time to time until a quorum is present to transact the business of the board of directors.

CHAPTER 61

An act to amend Section 782 of the Evidence Code, relating to rape.

[Approved by Governor June 23, 2004. Filed with Secretary of State June 24, 2004.]

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

SECTION 1. Section 782 of the Evidence Code is amended to read:

782. (a) In any prosecution under Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289 of the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit any crime defined in any of those sections, except where the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504, if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the

complaining witness under Section 780, the following procedure shall be followed:

(1) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness.

(2) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated. The affidavit shall be filed under seal and only unsealed by the court to determine if the offer of proof is sufficient to order a hearing pursuant to paragraph (3). After that determination, the affidavit shall be resealed by the court.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.

(4) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant pursuant to Section 780, and is not inadmissible pursuant to Section 352 of this code, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(5) An affidavit resealed by the court pursuant to paragraph (2) shall remain sealed, unless the defendant raises an issue on appeal or collateral review relating to the offer of proof contained in the sealed document. If the defendant raises that issue on appeal, the court shall allow the Attorney General and appellate counsel for the defendant access to the sealed affidavit. If the issue is raised on collateral review, the court shall allow the district attorney and defendant's counsel access to the sealed affidavit. The use of the information contained in the affidavit shall be limited solely to the pending proceeding.

(b) As used in this section, ''complaining witness'' means the alleged victim of the crime charged, the prosecution of which is subject to this section.

CHAPTER 62

An act to amend Section 17951 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor June 23, 2004. Filed with Secretary of State June 24, 2004.]

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

SECTION 1. Section 17951 of the Revenue and Taxation Code is amended to read:

17951. (a) For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1) of subdivision (i) of Section 17041, in the case of nonresident taxpayers the gross income includes only the gross income from sources within this state.

(b) Notwithstanding subdivision (a), the gross income of a nonresident taxpayer does not include income not subject to the Personal Income Tax Law (Part 10 (commencing with Section 17001) of Division 2) by operation of the following federal laws:

(1) Section 11108 of Title 46, United States Code, relating to compensation for the performance of duties of certain merchant seamen.

(2) Section 11502 of Title 49, United States Code, relating to compensation of an employee of a rail carrier.

(3) Section 14503 of Title 49, United States Code, relating to compensation of an employee of a motor carrier.

(4) Section 40116 of Title 49, United States Code, relating to the pay of an employee of an air carrier.

(5) Section 571 of Title 50, Appendix, United States Code, relating to military compensation of service members.

CHAPTER 63

An act to repeal Section 21084.2 of the Public Resources Code, relating to environmental quality.

[Approved by Governor June 23, 2004. Filed with Secretary of State June 24, 2004.]

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

SECTION 1. Section 21084.2 of the Public Resources Code is repealed.

CHAPTER 64

An act to amend Section 1373.621 of the Health and Safety Code, and to amend Section 10116.5 of the Insurance Code, relating to health.

[Approved by Governor June 23, 2004. Filed with
Secretary of State June 24, 2004.]

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

SECTION 1. Section 1373.621 of the Health and Safety Code is amended to read:

1373.621. (a) Except for a specialized health care service plan, every health care service plan contract that is issued, amended, delivered, or renewed in this state on or after January 1, 1999, that provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan for an employer subject to COBRA, as defined in subdivision (e), or an employer group for which the plan is required to offer Cal-COBRA coverage, as defined in subdivision (f), including a carrier providing replacement coverage under Section 1399.63, shall further offer the former employee the opportunity to continue benefits as required under subdivision (b), and shall further offer the former spouse of an employee or former employee the opportunity to continue benefits as required under subdivision (c).

(b) (1) In the event a former employee who worked for the employer for at least five years prior to the date of termination of employment and who is 60 years of age or older on the date employment ends is entitled to and so elects to continue benefits under COBRA or Cal-COBRA for himself or herself and for any spouse, the employee or spouse may further continue benefits beyond the date coverage under COBRA or Cal-COBRA ends, as set forth in paragraph (2). Except as otherwise specified, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA or Cal-COBRA had remained in force. For the employee or spouse, continuation coverage following the end of COBRA or Cal-COBRA is subject to payment of premiums to the health care service plan. Individuals ineligible for COBRA or Cal-COBRA, or who are eligible but have not elected or exhausted continuation coverage under federal COBRA or Cal-COBRA, are not entitled to continuation coverage under this section. Premiums for continuation coverage under this section shall be billed by, and remitted to, the health care service plan in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the plan's group subscriber agreement with the former employer.

(2) The employer shall notify the former employee or spouse or both, or the former spouse of the employee or former employee, of the availability of the continuation benefits under this section in accordance with Section 2800.2 of the Labor Code. To continue health care coverage

pursuant to this section, the individual shall elect to do so by notifying the plan in writing within 30 calendar days prior to the date continuation coverage under COBRA or Cal-COBRA is scheduled to end. Every health care service plan and specialized health care service plan shall provide to the employer replacing a health care service plan contract issued by the plan, or to the employer's agent or broker representative, within 15 days of any written request, information in possession of the plan reasonably required to administer the requirements of Section 2800.2 of the Labor Code.

(3) The continuation coverage shall end automatically on the earlier of (A) the date the individual reaches age 65, (B) the date the individual is covered under any group health plan not maintained by the employer or any other health plan, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) for a spouse, five years from the date on which continuation coverage under COBRA or Cal-COBRA was scheduled to end for the spouse, or (E) the date on which the employer terminates its group subscriber agreement with the health care service plan and ceases to provide coverage for any active employees through that plan, in which case the health care service plan shall notify the former employee or spouse or both of the right to a conversion plan in accordance with Section 1373.6.

(c) (1) If a former spouse of an employee or former employee was covered as a qualified beneficiary under COBRA or Cal-COBRA, the former spouse may further continue benefits beyond the date coverage under COBRA or Cal-COBRA ends, as set forth in paragraph (2) of subdivision (b). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA or Cal-COBRA had remained in force. Continuation coverage following the end of COBRA or Cal-COBRA is subject to payment of premiums to the health care service plan. Premiums for continuation coverage under this section shall be billed by, and remitted to, the health care service plan in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the plan's group subscriber agreement with the employer or former employer.

(2) The continuation coverage for the former spouse shall end automatically on the earlier of (A) the date the individual reaches 65 years of age, (B) the date the individual is covered under any group health plan not maintained by the employer or any other health plan, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) five years from the date on which continuation

coverage under COBRA or Cal-COBRA was scheduled to end for the former spouse, or (E) the date on which the employer or former employer terminates its group subscriber agreement with the health care service plan and ceases to provide coverage for any active employees through that plan, in which case the health care service plan shall notify the former spouse of the right to a conversion plan in accordance with Section 1373.6.

(d) (1) If the premium charged to the employer for a specific employee or dependent eligible under this section is adjusted for the age of the specific employee, or eligible dependent, on other than a composite basis, the rate for continuation coverage under this section shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former employee electing continuation coverage in the case of an individual who was eligible for COBRA, and 110 percent in the case of an individual who was eligible for Cal-COBRA. If the coverage continued is that of a former spouse, the premium charged shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former spouse selecting continuation coverage in the case of an individual who was eligible for COBRA, and 110 percent in the case of an individual who was eligible for Cal-COBRA.

(2) If the premium charged to the employer for a specific employee or dependent eligible under this section is not adjusted for age of the specific employee, or eligible dependent, then the rate for continuation coverage under this section shall not exceed 213 percent of the applicable current group rate. For purposes of this section, the ''applicable current group rate'' means the total premiums charged by the health care service plan for coverage for the group, divided by the relevant number of covered persons.

(3) However, in computing the premiums charged to the specific employer group, the health care service plan shall not include consideration of the specific medical care expenditures for beneficiaries receiving continuation coverage pursuant to this section.

(e) For purposes of this section, ''COBRA'' means Section 4980B of Title 26 of the United States Code, Section 1161 et seq. of Title 29 of the United States Code, and Section 300bb of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as amended.

(f) For purposes of this section, ''Cal-COBRA'' means the continuation coverage that must be offered pursuant to Article 4.5 (commencing with Section 1366.20), or Article 1.7 (commencing with Section 10128.50) of Chapter 1 of Part 2 of Division 2 of the Insurance Code.

(g) For the purposes of this section, ''former spouse'' means either an individual who is divorced from an employee or former employee or an individual who was married to an employee or former employee at the time of the death of the employee or former employee.

(h) Every plan evidence of coverage that is issued, amended, or renewed after July 1, 1999, shall contain a description of the provisions and eligibility requirements for the continuation coverage offered pursuant to this section.

(i) This section shall take effect on January 1, 1999.

(j) This section does not apply to any individual who is not eligible for its continuation coverage prior to January 1, 2005.

SEC. 2. Section 10116.5 of the Insurance Code is amended to read:

10116.5. (a) Every policy of disability insurance that is issued, amended, delivered, or renewed in this state on or after January 1, 1999, that provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan for an employer subject to COBRA, as defined in subdivision (e), or an employer group for which the disability insurer is required to offer Cal-COBRA coverage, as defined in subdivision (f), including a carrier providing replacement coverage under Section 10128.3, shall further offer the former employee the opportunity to continue benefits as required under subdivision (b), and shall further offer the former spouse of an employee or former employee the opportunity to continue benefits as required under subdivision (c).

(b) (1) If a former employee worked for the employer for at least five years prior to the date of termination of employment and is 60 years of age or older on the date employment ends is entitled to and so elects to continue benefits under COBRA or Cal-COBRA for himself or herself and for any spouse, the employee or spouse may further continue benefits beyond the date coverage under COBRA or Cal-COBRA ends, as set forth in paragraph (2). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA or Cal-COBRA had remained in force. For the employee or spouse, continuation coverage following the end of COBRA or Cal-COBRA is subject to payment of premiums to the insurer. Individuals ineligible for COBRA or Cal-COBRA or who are eligible but have not elected or exhausted continuation coverage under federal COBRA or Cal-COBRA are not entitled to continuation coverage under this section. Premiums for continuation coverage under this section shall be billed by, and remitted to, the insurer in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the insurer's group contract with the employer.

(2) The employer shall notify the former employee or spouse or both, or the former spouse of the employee or former employee, of the availability of the continuation benefits under this section in accordance with Section 2800.2 of the Labor Code. To continue health care coverage pursuant to this section, the individual shall elect to do so by notifying the insurer in writing within 30 calendar days prior to the date continuation coverage under COBRA or Cal-COBRA is scheduled to end. Every disability insurer shall provide to the employer replacing a group benefit plan policy issued by the insurer, or to the employer's agent or broker representative, within 15 days of any written request, information in possession of the insurer reasonably required to administer the requirements of Section 2800.2 of the Labor Code.

(3) The continuation coverage shall end automatically on the earlier of (A) the date the individual reaches age 65, (B) the date the individual is covered under any group health plan not maintained by the employer or any other insurer or health care service plan, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) for a spouse, five years from the date on which continuation coverage under COBRA or Cal-COBRA was scheduled to end for the spouse, or (E) the date on which the employer terminates its group contract with the insurer and ceases to provide coverage for any active employees through that insurer, in which case the insurer shall notify the former employee or spouse, or both, of the right to a conversion policy.

(c) (1) If a former spouse of an employee or former employee was covered as a qualified beneficiary under COBRA or Cal-COBRA, the former spouse may further continue benefits beyond the date coverage under COBRA or Cal-COBRA ends, as set forth in paragraph (2) of subdivision (b). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA or Cal-COBRA had remained in force. Continuation coverage following the end of COBRA or Cal-COBRA is subject to payment of premiums to the insurer. Premiums for continuation coverage under this section shall be billed by, and remitted to, the insurer in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the insurer's group contract with the employer or former employer.

(2) The continuation coverage for the former spouse shall end automatically on the earlier of (A) the date the individual reaches 65 years of age, (B) the date the individual is covered under any group health plan not maintained by the employer or any other health care service plan or insurer, regardless of whether that coverage is less

valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) five years from the date on which continuation coverage under COBRA or Cal-COBRA was scheduled to end for the former spouse, or (E) the date on which the employer or former employer terminates its group contract with the insurer and ceases to provide coverage for any active employees through that insurer, in which case the insurer shall notify the former spouse of the right to a conversion policy.

(d) (1) If the premium charged to the employer for a specific employee or dependent eligible under this section is adjusted for the age of the specific employee, or eligible dependent, on other than a composite basis, the rate for continuation coverage under this section shall not exceed 102 percent of the premium charged by the insurer to the employer for an employee of the same age as the former employee electing continuation coverage in the case of an individual who was eligible for COBRA, and 110 percent in the case of an individual who was eligible for Cal-COBRA. If the coverage continued is that of a former spouse, the premium charged shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former spouse selecting continuation coverage in the case of an individual who was eligible for COBRA, and 110 percent in the case of an individual who was eligible for Cal-COBRA.

(2) If the premium charged to the employer for a specific employee or dependent eligible under this section is not adjusted for age of the specific employee, or eligible dependent, then the rate for continuation coverage under this section shall not exceed 213 percent of the applicable current group rate. For purposes of this section, the ''applicable current group rate'' means the total premiums charged by the insurer for coverage for the group, divided by the relevant number of covered persons.

(3) However, in computing the premiums charged to the specific employer group, the insurer shall not include consideration of the specific medical care expenditures for beneficiaries receiving continuation coverage pursuant to this section.

(e) For purposes of this section, ''COBRA'' means Section 4980B of Title 26, Section 1161 and following of Title 29, and Section 300bb of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), and as amended.

(f) For purposes of this section, ''Cal-COBRA'' means the continuation coverage that must be offered pursuant to Article 1.7 (commencing with Section 10128.50), or Article 4.5 (commencing with Section 1366.20) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(g) For the purposes of this section, ''former spouse'' means either an individual who is divorced from an employee or former employee or an individual who was married to an employee or former employee at the time of the death of the employee or former employee.

(h) Every group benefit plan evidence of coverage that is issued, amended, or renewed after January 1, 1999, shall contain a description of the provisions and eligibility requirements for the continuation coverage offered pursuant to this section.

(i) This section shall take effect on January 1, 1999.

(j) This section does not apply to any individual who is not eligible for its continuation coverage prior to January 1, 2005.

CHAPTER 65

An act to add Section 1550.1 to the Evidence Code, and to add Section 11106.3 to the Penal Code, relating to records.

[Approved by Governor June 23, 2004. Filed with Secretary of State June 24, 2004.]

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

SECTION 1. Section 1550.1 is added to the Evidence Code, to read:

1550.1. Reproductions of files, records, writings, photographs, fingerprints or other instruments in the official custody of a criminal justice agency that were microphotographed or otherwise reproduced in a manner that conforms with the provisions of Section 11106.1, 11106.2, or 11106.3 of the Penal Code shall be admissible to the same extent and under the same circumstances as the original file, record, writing or other instrument would be admissible.

SEC. 2. Section 11106.3 is added to the Penal Code, to read:

11106.3. Fingerprints may be stored or created in an electronic format that does not permit additions, deletions or changes to the original fingerprints so long as the storage medium complies with the minimum standards of quality approved by the National Institute of Standards and Technology.

SEC. 3. Sections 1 and 2 of this bill are declarative of existing law.

CHAPTER 66

An act to amend Sections 1102.6a, 1102.17, and 1103.2 of the Civil Code, relating to real estate disclosures.

[Approved by Governor June 23, 2004. Filed with Secretary of State June 24, 2004.]

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

SECTION 1. Section 1102.6a of the Civil Code is amended to read:

1102.6a. (a) On and after July 1, 1990, any city or county may elect to require disclosures on the form set forth in subdivision (b) in addition to those disclosures required by Section 1102.6. However, this section does not affect or limit the authority of a city or county to require disclosures on a different disclosure form in connection with transactions subject to this article pursuant to an ordinance adopted prior to July 1, 1990. Such an ordinance adopted prior to July 1, 1990, may be amended thereafter to revise the disclosure requirements of the ordinance, in the discretion of the city council or county board of supervisors.

(b) Disclosures required pursuant to this section pertaining to the property proposed to be transferred, shall be set forth in, and shall be made on a copy of, the following disclosure form:

LOCAL OPTION

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____ _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED PROPERTY IN COMPLIANCE WITH ORDINANCE NO. _____ OF THE _____ CITY OR COUNTY CODE AS OF _____, 20___. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AS REQUIRED BY THE CITY OR COUNTY OF _____, AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

1. _____

_____

_____

_____

2. _____

_____

_____

_____

(Example: Adjacent land is zoned for timber production which may be subject to harvest.)

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____
Seller _____ Date _____

II

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____
Seller _____ Date _____ Buyer _____ Date _____

Agent (Broker
Representing Seller) _____ By _____ Date _____
(Associate Licensee
or Broker–Signature)

Agent (Broker
Obtaining the Offer) _____ By _____ Date _____
(Associate Licensee
or Broker–Signature)

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

(c) This section does not preclude the use of addenda to the form specified in subdivision (b) to facilitate the required disclosures. This section does not preclude a city or county from using the disclosure form specified in subdivision (b) for a purpose other than that specified in this section.

(d) (1) On and after January 1, 2005, if a city or county adopts a different or additional disclosure form pursuant to this section regarding the proximity or effects of an airport, the statement in that form shall contain, at a minimum, the information in the statement ''Notice of Airport in Vicinity'' found in Section 11010 of the Business and Professions Code, or Section 1103.4 or 1353.

(2) On and after January 1, 2006, if a city or county does not adopt a different or additional disclosure form pursuant to this section, then the provision of an ''airport influence area'' disclosure pursuant to Section 11010 of the Business and Professions Code, or Section 1103.4 or 1353, or if there is not a current airport influence map, a written disclosure of an airport within two statute miles, shall be deemed to satisfy any city or county requirements for the disclosure of airports in connection with transfers of real property.

SEC. 2. Section 1102.17 of the Civil Code is amended to read:

1102.17. The seller of residential real property subject to this article who has actual knowledge that the property is adjacent to, or zoned to allow, an industrial use described in Section 731a of the Code of Civil Procedure, or affected by a nuisance created by such a use, shall give written notice of that knowledge as soon as practicable before transfer of title.

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) or a third–party consultant 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.

Signature of Transferor(s)_____ Date_____
Signature of Transferor(s)_____ Date_____

Agent(s)_____ Date_____
Agent(s)_____ Date_____

Check only one of the following:

☐ Transferor(s) and their agent(s) represent that the information herein is true and correct to the best of their knowledge as of the date signed by the transferor(s) and agent(s).

☐ Transferor(s) and their agent(s) acknowledge that they have exercised good faith in the selection of a third–party report provider as required in Civil Code Section 1103.7, and that the representations made in this Natural Hazard Disclosure Statement are based upon information provided by the independent third–party disclosure provider as a substituted disclosure pursuant to Civil Code Section 1103.4. Neither transferor(s) nor their agent(s) (1) has independently verified the information contained in this statement and report or (2) is personally aware of any errors or inaccuracies in the information contained on the statement. This statement was prepared by the provider below:

Third–Party
Disclosure Provider(s)_____ Date_____

Transferee represents that he or she has read and understands this document. Pursuant to Civil Code Section 1103.8, the representations made in this Natural Hazard Disclosure Statement do not constitute all of the transferor's or agent's disclosure obligations in this transaction.

Signature of Transferee(s)_____ Date_____
Signature of Transferee(s)_____ 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) (1) The legal effect of a consultant's report delivered to satisfy the exemption provided by Section 1103.4 is not changed when it is accompanied by a Natural Hazard Disclosure Statement.

(2) A consultant's report shall always be accompanied by a completed and signed Natural Hazard Disclosure Statement.

(3) In a disclosure statement required by this section, an agent and third-party provider may cause his or her name to be preprinted in lieu of an original signature in the portions of the form reserved for signatures. The use of a preprinted name shall not change the legal effect of the acknowledgment.

(g) 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.

(h) 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.

CHAPTER 67

An act to amend Sections 3412, 3413, 3600, 3601, 3602, 3603, 3604, 3610, 3611, and 3612 of, and to add Section 3613 to, the Probate Code, relating to incapacity.

[Approved by Governor June 23, 2004. Filed with Secretary of State June 24, 2004.]

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

SECTION 1. Section 3412 of the Probate Code is amended to read:

3412. If the minor has a guardian of the estate and the sole asset of the guardianship estate is money, the court may order that the guardianship of the estate be terminated and, if the court so orders, the court in its discretion shall also order any one or more of the following:

(a) That the money be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) That all or any part of the money be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(c) If the money of the guardianship estate does not exceed twenty thousand dollars ($20,000), that the money be held on any other condition that the court in its discretion determines to be in the best interests of the minor.

(d) If the money of the guardianship estate does not exceed five thousand dollars ($5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

(e) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, if all of the following conditions are met:

(1) The county treasurer has been authorized by the county board of supervisors to handle the deposits.

(2) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code.

(3) The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.

(4) The county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor.

(5) Funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of

the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4.

SEC. 2. Section 3413 of the Probate Code is amended to read:

3413. If the minor has no guardian of the estate and there is money belonging to the minor, the court may order that a guardian of the estate be appointed and that the money be paid to the guardian or the court may order any one or more of the following:

(a) That the money be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) That all or any part of the money be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(c) If the money belonging to the minor does not exceed twenty thousand dollars ($20,000), that the money be held on any other condition that the court in its discretion determines to be in the best interests of the minor.

(d) If the money belonging to the minor does not exceed five thousand dollars ($5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

(e) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, if all of the following conditions are met:

(1) The county treasurer has been authorized by the county board of supervisors to handle the deposits.

(2) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code.

(3) The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.

(4) The county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor.

(5) Funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of

the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4.

SEC. 3. Section 3600 of the Probate Code is amended to read:

3600. This chapter applies whenever both of the following conditions exist:

(a) A court (1) approves a compromise of, or the execution of a covenant not to sue on or a covenant not to enforce judgment on, a minor's disputed claim, (2) approves a compromise of a pending action or proceeding to which a minor or person with a disability is a party, or (3) gives judgment for a minor or person with a disability.

(b) The compromise, covenant, or judgment provides for the payment or delivery of money or other property for the benefit of the minor or person with a disability.

SEC. 4. Section 3601 of the Probate Code is amended to read:

3601. (a) The court making the order or giving the judgment referred to in Section 3600, as a part thereof, shall make a further order authorizing and directing that reasonable expenses, medical or otherwise and including reimbursement to a parent, guardian, or conservator, costs, and attorney's fees, as the court shall approve and allow therein, shall be paid from the money or other property to be paid or delivered for the benefit of the minor or person with a disability.

(b) The order required by subdivision (a) may be directed to the following:

(1) A parent of the minor, the guardian ad litem, or the guardian of the estate of the minor or the conservator of the estate of the person with a disability.

(2) The payer of any money to be paid pursuant to the compromise, covenant, or judgment for the benefit of the minor or person with a disability.

SEC. 5. Section 3602 of the Probate Code is amended to read:

3602. (a) If there is no guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property, after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601, shall be paid, delivered, deposited, or invested as provided in Article 2 (commencing with Section 3610).

(b) Except as provided in subdivisions (c) and (d), if there is a guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property, after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601, shall be paid or delivered to the guardian or conservator of the estate. Upon application of the guardian or conservator, the court making the order or giving the judgment referred to in Section 3600 or the court in which the

guardianship or conservatorship proceeding is pending may, with or without notice, make an order that all or part of the money paid or to be paid to the guardian or conservator under this subdivision be deposited or invested as provided in Section 2456.

(c) Upon ex parte petition of the guardian or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may for good cause shown order one or more of the following:

(1) That all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(2) If there is a guardianship of the estate of the minor, that all or part of the remaining balance of money and other property not become a part of the guardianship estate and instead be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(3) That all or part of the remaining balance of money and other property not become a part of the guardianship estate and, instead, be transferred to the trustee of a trust which is either created by, or approved of, in the order or judgment described in Section 3600. This trust shall be revocable by the minor upon attaining 18 years of age, and shall contain other terms and conditions, including, but not limited to, terms and conditions concerning trustee's accounts and trustee's bond, as the court determines to be necessary to protect the minor's interests.

(d) Upon petition of the guardian, conservator, or any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may order that all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be paid to a special needs trust established under Section 3604 for the benefit of the minor or person with a disability.

(e) If the petition is by a person other than the guardian or conservator, notice of hearing on a petition under subdivision (c) shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(f) Notice of the time and place of hearing on a petition under subdivision (d), and a copy of the petition, shall be mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.

SEC. 6. Section 3603 of the Probate Code is amended to read:

3603. Where reference is made in this chapter to a ''person with a disability,'' the reference shall be deemed to include the following:

(a) A person for whom a conservator may be appointed.

(b) Any of the following persons, subject to the provisions of Section 3613:

(1) A person who meets the definition of disability as defined in Section 1382c(a)(3) of Title 42 of the United States Code, or as defined in Section 416(i)(1) of Title II of the federal Social Security Act (42 U.S.C. Sec. 401 et seq.) and regulations implementing that act, as set forth in Part 416.905 of Title 20 of the Federal Code of Regulations.

(2) A person who meets the definition of disability as defined in paragraphs (1), (2), and (3) of subsection (d) of Section 423 of Title II of the federal Social Security Act (42 U.S.C. Sec. 401 et seq.) and regulations implementing that act, as set forth in Part 404.1505 of Title 20 of the Federal Code of Regulations.

(3) A minor who meets the definition of disability, as set forth in Part 416.906 of Title 20 of the Federal Code of Regulations.

(4) A person with a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code.

SEC. 7. Section 3604 of the Probate Code is amended to read:

3604. (a) (1) If a court makes an order under Section 3602 or 3611 that money of a minor or person with a disability be paid to a special needs trust, the terms of the trust shall be reviewed and approved by the court and shall satisfy the requirements of this section. The trust is subject to continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court. The court may transfer jurisdiction to the court in the proper county for commencement of a proceeding as determined under Section 17005.

(2) If the court referred to in subdivision (a) could have made an order under Section 3602 or 3611 to place that money into a special needs trust, but that order was not requested, a parent, guardian, conservator, or other interested person may petition a court that exercises jurisdiction pursuant to Section 800 for that order. In doing so, notice shall be provided pursuant to subdivisions (e) and (f) of Section 3602, or subdivision (c) of Section 3611, and that notice shall be given at least 15 days before the hearing.

(b) A special needs trust may be established and continued under this section only if the court determines all of the following:

(1) That the minor or person with a disability has a disability that substantially impairs the individual's ability to provide for the individual's own care or custody and constitutes a substantial handicap.

(2) That the minor or person with a disability is likely to have special needs that will not be met without the trust.

(3) That money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of the minor or person with a disability.

(c) If at any time it appears (1) that any of the requirements of subdivision (b) are not satisfied or the trustee refuses without good cause to make payments from the trust for the special needs of the beneficiary, and (2) that the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, or a county or city and county in this state has a claim against trust property, that department, county, or city and county may petition the court for an order terminating the trust.

(d) A court order under Section 3602 or 3611 for payment of money to a special needs trust shall include a provision that all statutory liens in favor of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in this state shall first be satisfied.

SEC. 8. Section 3610 of the Probate Code is amended to read:

3610. When money or other property is to be paid or delivered for the benefit of a minor or person with a disability under a compromise, covenant, order or judgment, and there is no guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in this article.

SEC. 9. Section 3611 of the Probate Code is amended to read:

3611. In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall, upon application of counsel for the minor or person with a disability, order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court, and that the remaining balance of any other property delivered or to be delivered be held on conditions the court determines to be in the best interest of the minor or person with a disability.

(c) After a hearing by the court, that the remaining balance of any money and other property be paid to a special needs trust established under Section 3604 for the benefit of the minor or person with a

disability. Notice of the time and place of the hearing and a copy of the petition shall be mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.

(d) If the remaining balance of the money to be paid or delivered does not exceed twenty thousand dollars ($20,000) , that all or any part of the money be held on any other conditions the court in its discretion determines to be in the best interest of the minor or person with a disability.

(e) If the remaining balance of the money and other property to be paid or delivered does not exceed five thousand dollars ($5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

(f) If the remaining balance of the money and other property to be paid or delivered is to be paid or delivered for the benefit of the minor, that all or any part of the money and other property be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(g) That the remaining balance of the money and other property be paid or delivered to the trustee of a trust which is created by, or approved of, in the order or judgment referred to in Section 3600. This trust shall be revocable by the minor upon attaining the age of 18 years, and shall contain other terms and conditions, including, but not limited to, terms and conditions concerning trustee's accounts and trustee's bond, as the court determines to be necessary to protect the minor's interests.

(h) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, if all of the following conditions are met:

(1) The county treasurer has been authorized by the county board of supervisors to handle the deposits.

(2) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code.

(3) The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.

(4) The county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor.

(5) Funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4.

(i) That the remaining balance of the money and other property be paid or delivered to the person with a disability.

SEC. 10. Section 3612 of the Probate Code is amended to read:

3612. (a) Notwithstanding any other provision of law and except to the extent the court orders otherwise, the court making the order under Section 3611 shall have continuing jurisdiction of the money and other property paid, delivered, deposited, or invested under this article until the minor reaches 18 years of age.

(b) Notwithstanding subdivision (a), the trust of an individual who meets the definition of a person with a disability under paragraph (3) of subdivision (b) of Section 3603 and who reaches 18 years of age, shall continue and be under continuing court jurisdiction until terminated by the court.

SEC. 11. Section 3613 is added to the Probate Code, to read:

3613. Notwithstanding any other provision of this chapter, a court may not make an order or give a judgment pursuant to Section 3600, 3601, 3602, 3610, or 3611 with respect to an adult who has the capacity within the meaning of Section 812 to consent to the order and who has no conservator of the estate with authority to make that decision , without the express consent of that person.

CHAPTER 68

An act to amend Sections 4521, 4535, and 4547 of the Welfare and Institutions Code, relating to developmental services.

[Approved by Governor June 23, 2004. Filed with Secretary of State June 24, 2004.]

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

SECTION 1. Section 4521 of the Welfare and Institutions Code is amended to read:

4521. (a) All references to ''state council'' in this part shall be a reference to the State Council on Developmental Disabilities.

(b) There shall be 29 voting members on the state council appointed by the Governor, as follows:

(1) One member from each of the 13 area boards on developmental disabilities described in Article 6 (commencing with Section 4543), nominated by the area board to serve as a council member, who shall be persons with a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, or parents or guardians of minors with developmental disabilities or conservators of adults with developmental disabilities residing in California. Five of these members shall be persons with a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, three shall be parents, immediate relatives, guardians, or conservators of persons with developmental disabilities, and five shall be either a person with a developmental disability or a parent, immediate relatives, guardian, or conservator of a person with a developmental disability. The nominee from each area board shall be an area board member who was appointed by the Governor.

(2) Ten members of the council shall include the following:

(A) The Secretary of the California Health and Human Services Agency, or his or her designee, who shall represent the agency and the state agency that administers funds under Title XIX of the Social Security Act for people with developmental disabilities.

(B) The Director of Developmental Services or his or her chief deputy.

(C) The Director of Rehabilitation or his or her chief deputy.

(D) The Superintendent of Public Instruction or his or her designee.

(E) A representative from a nongovernmental agency or group concerned with the provision of services to persons with developmental disabilities.

(F) One representative from each of the two university centers for excellence in the state, pursuant to 42 U.S.C. Section 15061 et seq., providing training in the field of developmental services. These individuals shall have expertise in the field of developmental disabilities.

(G) The Director of Health Services or his or her chief deputy.

(H) A member of the board of directors of the agency established in California to fulfill the requirements and assurance of Section 142 of the

Developmental Disabilities Act of 1984 for a system to protect and advocate the rights of persons with developmental disabilities.

(I) The Director of Aging or his or her chief deputy.

(3) Six members at large, appointed by the Governor, as follows:

(A) Two shall be persons with developmental disabilities, as defined in Section 15002(8) of Title 42 of the United States Code.

(B) One shall be a person who is a parent, immediate relative, guardian, or conservator of a resident of a developmental center.

(C) One shall be a person who is a parent, immediate relative, guardian, or conservator of a person with a developmental disability living in the community.

(D) One shall be a person who is a parent, immediate relative, guardian, or conservator of a person with a developmental disability living in the community, nominated by the Speaker of the Assembly.

(E) One shall be a person with developmental disabilities, as defined in Section 15002(8) of Title 42 of the United States Code, nominated by the Senate Committee on Rules.

(c) Prior to appointing the 29 members pursuant to this section, the Governor shall request and consider recommendations from organizations representing, or providing services to, or both, persons with developmental disabilities, and shall take into account socioeconomic, ethnic, and geographic considerations of the state.

(d) The term of each member described in paragraph (1) of, subparagraphs (E) and (H) of paragraph (2) of, and paragraph (3) of, subdivision (b) shall be for three years; provided, however, of the members first appointed by the Governor pursuant to paragraph (1) of subdivision (b), five shall hold office for three years, four shall hold office for two years, and four shall hold office for one year. In no event shall any member described in paragraph (1) of, subparagraphs (E) and (H) of paragraph (2) of, and paragraph (3) of, subdivision (b) serve for more than a total of six years of service. Service by any individual on any state council on developmental disabilities existing on and after January 1, 2003, shall be included in determining the total length of service.

(e) Members appointed to the state council prior to June 1, 2002, shall continue to serve until the term to which they were appointed expires. Members appointed on June 1, 2002, or thereafter shall have their terms expire on January 1, 2003.

(f) Notwithstanding subdivision (c) of Section 4546, members described in subdivision (b) shall continue to serve on the area board following the expiration of their term on the area board until their term on the state council has expired.

(g) A member may continue to serve following the expiration of his or her term until the Governor appoints that member's successor. The state council shall notify the Governor regarding membership

requirements of the council and shall notify the Governor at least 60 days before a member's term expires, and when a vacancy on the council remains unfilled for more than 60 days.

SEC. 2. Section 4535 of the Welfare and Institutions Code is amended to read:

4535. (a) The state council shall meet at least six times each year, and, on call of its chairperson, as often as necessary to fulfill its duties. All meetings and records of the state council shall be open to the public.

(b) The state council shall, by majority vote of the voting members, elect its own chairperson and vice chairperson who shall have full voting rights on all state council actions, from among the appointed members, described in paragraph (1) or (3) of subdivision (b) of Section 4521, and shall establish any committees it deems necessary or desirable. The chairperson shall appoint all members of committees of the state council. The chairs and vice chairs of the state council and its standing committees shall be individuals with a developmental disability, or the parent, sibling, guardian, or conservator of an individual with a developmental disability.

(c) The state council may appoint technical advisory consultants and may establish committees composed of professional persons serving persons with developmental disabilities as necessary for technical assistance. The state council may call upon representatives of all agencies receiving state or federal funds for assistance and information, and shall invite persons with developmental disabilities, their parents, guardians, or conservators, professionals, or members of the general public to participate on state council committees, when appropriate.

(d) When convening any task force or advisory group, the state council shall make its best effort to ensure representation by consumers and family members representing the state's multicultural diversity.

SEC. 3. Section 4547 of the Welfare and Institutions Code is amended to read:

4547. (a) Each area board shall meet at least quarterly, and on call of the board chairperson, as often as necessary to fulfill its duties. All meetings and records of the area board shall be open to the public.

(b) (1) Each area board shall, by majority vote of the voting members, elect its own chairperson from among the appointed members who are persons with developmental disabilities, or parents, immediate relatives, guardians, or conservators of these persons, and shall establish any committees it deems necessary or desirable. The board chairperson shall appoint all members of committees of the area board.

(2) An area board may call upon representatives of all agencies receiving state funds, for assistance and information, and shall invite persons with developmental disabilities, their parents, immediate

relatives, guardians, or conservators, professionals, or members of the general public to participate on area board committees.

(3) When convening any task force or advisory group, the area board shall make its best effort to ensure representation by consumers and family members representing the community's multicultural diversity.

CHAPTER 69

An act to amend Sections 7005, 7008, 89529.03, and 89621 of the Education Code, to amend Sections 3517.6, 3517.61, 3572.5, 9322, 9359.83, 14876, 16391.1, 19849.15, 19871, 21450, 21506, 21551, 21635, 21635.5, 26296.22, 26299.036, 73642, 73952, 74342, 74742, and 75521 of, to add Part 5 (commencing with Section 22750) to Division 5 of Title 2 of, to repeal Sections 21690, 21691, 21692 of, to repeal Part 5 (commencing with Section 22751) of Division 5 of Title 2 of, and to repeal and add Part 6 (commencing with Section 22950) of Division 5 of Title 2 of, the Government Code, to amend Section 124964 of the Health and Safety Code, to amend Section 4856 of the Labor Code, to amend Section 13600 of the Probate Code, to amend Section 35137 of the Public Resources Code, and to amend Sections 130109, 131269, and 140109 of the Public Utilities Code, relating to public employee benefits, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 23, 2004. Filed with Secretary of State June 24, 2004.]

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

SECTION 1. Section 7005 of the Education Code is amended to read:

7005. This article does not apply to persons receiving benefits pursuant to the Public Employees' Medical and Hospital Care Act (Chapter 1 (commencing with Section 22750) of Part 5 of Division 5 of Title 2 of the Government Code) and to the employers on which their benefits are based.

For purposes of this section, ''employer'' means a county superintendent of schools, a school district, or a community college district irrespective of whether employees may be represented by different bargaining groups. Notwithstanding any other provision of this part, this article does not apply to employers for those groups of employees for whom coverage under the Public Employees' Medical

and Hospital Care Act (Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code) is provided by contract.

SEC. 2. Section 7008 of the Education Code is amended to read:

7008. (a) Notwithstanding any other provision of law, a member of the Defined Benefit Program of the State Teachers' Retirement Plan who is disabled as a result of an injury that is a direct consequence of a violent act perpetrated on his or her person while performing duties in the scope of employment, and the employment is creditable under the provisions of the Teachers' Retirement Law (Part 13 (commencing with Section 22000)), may, upon qualifying for a disability under Section 24001 and while receiving an allowance under Section 24002, continue in the district's health care plan and dental care plan by paying all of the employer's and employee's premiums and all of the related administrative costs of the employer.

(b) Notwithstanding any other provision of law, a school member as defined in Section 20370 of the Government Code, or a local police officer as defined in Section 20430 of the Government Code, who is disabled as a result of an injury that is a direct consequence of a violent act perpetrated on his or her person while performing duties in the scope of employment, and the employment is creditable under the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code), may, upon qualifying for a disability and while receiving an allowance under Chapter 12 (commencing with Section 21060) of Part 3 of Division 5 of Title 2 of the Government Code, continue in the employer's health care plan and dental care plan by paying all of the employer's and employee's premiums and all of the related administrative costs of the employer.

(c) Subdivisions (a) and (b) do not apply to any member who is employed by a school district that contracts with the Public Employees' Retirement System for health care coverage under the Public Employees' Medical and Health Care Act, (Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code).

SEC. 3. Section 89529.03 of the Education Code is amended to read:

89529.03. If an employee is temporarily disabled by illness or injury arising out of and in the course of state employment, he or she shall become entitled, regardless of his or her period of service, to receive industrial disability leave and payments, in lieu of workers' compensation temporary disability payments and payment under Section 89527, for a period not exceeding 52 weeks within two years from the first day of disability. The payments shall be in the amount of the employee's full pay less withholding based on his or her exemptions in effect on the date of his or her disability for federal income taxes, state income taxes, and social security taxes not to exceed 22 working days

of disability subject to Section 89529.08. Thereafter, the payment shall be two-thirds of full pay. Payments shall be additionally adjusted to offset disability benefits, excluding those disability benefits payable from the State Teachers' Retirement System, the employee may receive from other employer-subsidized programs, except that no adjustment will be made for benefits to which the employee's family is entitled up to a maximum of three-quarters of full pay. Contributions to the Public Employees' Retirement System or the State Teachers' Retirement System shall be deducted in the amount based on full pay. Discretionary deductions of the employee including those for coverage under a state health benefits plan in which the employee is enrolled shall continue to be deducted unless canceled by the employee. State employer contributions to the Public Employees' Retirement System and state employer normal retirement contributions to the State Teachers' Retirement System shall be made on the basis of full pay and state contributions pursuant to Sections 22871 and 22885 of the Government Code because of the employee's enrollment in a health benefits plan shall continue.

SEC. 4. Section 89621 of the Education Code is amended to read:

89621. Any eligible employee electing to participate in the optional retirement program shall be ineligible for membership in the Public Employees' Retirement System so long as he or she is employed in any eligible position by the California State University. In the event an optional retirement program participant assumes a position in public service for which the optional retirement program is not available, the employee shall, at that time, cease participation in the program and shall begin participation in the Public Employees' Retirement System.

Employees who elect to participate in the optional retirement program shall remain eligible to participate in the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code) as if they were members of the Public Employees' Retirement System.

SEC. 5. Section 3517.6 of the Government Code is amended to read:

3517.6. (a) (1) In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883,

19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22870, 22871, or 22890 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19576.1, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22870, 22871, or 22890 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(3) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19574, 19574.1, 19574.2, 19575, 19576.1, 19578, 19582, 19582.1, 19175.1, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3,

19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22870, 22871, or 22890 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(4) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 12 or 13. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18670, 18714, 19080.5, 19100, 19143, 19261, 19574, 19574.1, 19574.2, 19575, 19578, 19582, 19583, 19702, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22870, 22871, or 22890 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(b) In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding may not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above,

those provisions of the memorandum of understanding may not become effective unless approved by the Legislature.

SEC. 6. Section 3517.61 of the Government Code is amended to read:

3517.61. Notwithstanding Section 3517.6, for state employees in State Bargaining Unit 6, in any case where the provisions of Section 70031 of the Education Code, subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22870, 22871, or 22890 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action. In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding may not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding may not become effective unless approved by the Legislature.

SEC. 7. Section 3572.5 of the Government Code is amended to read:

3572.5. (a) Except as provided in subdivision (b), in the case where the following provisions of law are in conflict with a memorandum of understanding, the memorandum of understanding shall be controlling.

(1) Part 13 (commencing with Section 22000) of, and Sections 66609, 89007, 89039, 89500, 89501, 89502, 89503, 89504, 89505, 89505.5, 89506, 89507, 89508, 89510, 89512, 89513, 89514, 89515, 89516, 89517, 89518, 89519, 89520, 89523, 89524, 89527, 89531, 89532, 89533, 89534, 89537, 89541, 89542, 89543, 89544, 89545, 89546, 89550, 89551, 89552, 89553, 89554, 89555, 89556, 89700, and 89701 of, the Education Code.

(2) Sections 825, 825.2, 825.6, 3569.5, 6700, 11020, and 11021, Chapter 2 (commencing with Section 18150) of Part 1 of Division 5 of Title 2, Sections 18200, 19841, 19848, 19850.6, and 19864, Article 4 (commencing with Section 19869) and Article 5 (commencing with Section 19878) of Chapter 2.5 of Part 2.6 of Division 5 of Title 2, and Section 22871.

(3) Sections 395, 395.01, 395.05, 395.1, and 395.3 of the Military and Veterans Code.

(b) (1) Notwithstanding the inclusion in Section 89542.5 of the Education Code, except with respect to paragraph (5) of subdivision (a) of that section, of a provision providing that, if the statute is in conflict with a memorandum of understanding reached pursuant to this chapter, the memorandum of understanding shall be controlling without further legislative action, unless the memorandum of understanding requires the expenditure of funds, that section, except for paragraph (5) of subdivision (a) of that section, provides a minimum level of benefits or rights, and is superseded by a memorandum of understanding only if the relevant terms of the memorandum of understanding provide more than the minimum level of benefits or rights set forth in that section, except for paragraph (5) of subdivision (a) of that section.

(2) This subdivision only applies to a memorandum of understanding entered into on or after January 1, 2002.

SEC. 8. Section 9322 of the Government Code is amended to read:

9322. (a) Notwithstanding Part 6 (commencing with Section 22950) of Division 5, or any other law, the Legislature shall provide dental care plan coverage, pursuant to this section, for a person who is (1) a former Member of the Assembly or Senate or former legislative employee and who meets the conditions imposed by subdivision (a) of Section 22815, (2) a former Member of the Assembly or Senate or former legislative employee as defined by subdivision (f) or (g) of Section 22760, or (3) a former Member of the Assembly or Senate who meets the conditions imposed by subparagraph (A) or (B) of paragraph (1) of subdivision (a) of Section 22815.

(b) The Senate Committee on Rules shall administer the dental care plan for former Senators and former Senate employees. The Assembly Committee on Rules shall administer the dental care plan for former Assembly Members and former Assembly employees. Each rules committee shall be paid by those persons the contributions specified by subdivision (b) of Section 22815, including the additional 2 percent of the contribution payments required to be paid to cover the cost of administration. If the Senate Committee on Rules or the Assembly Committee on Rules does not receive the required contribution and the additional 2 percent of the contribution payment on the first day of a month or within 20 days thereafter, continued coverage shall be terminated effective the first day of that month and may not be reinstated by subsequent receipt of the contribution and payment.

(c) If a person described in subdivision (a) retires, he or she shall be enrolled in the dental care plan provided for retirees in the retirement plan in which he or she is a member.

(d) There is no duty to locate or notify any person who may be eligible to enroll pursuant to this section.

SEC. 9. Section 9359.83 of the Government Code is amended to read:

9359.83. Retired members of the system, and beneficiaries, who are entitled to receive allowances under the provisions of this chapter, may authorize deductions to be made from their retirement allowance payments, in accordance with regulations established by the board, for the payment of group insurance premiums and for dues or charges of a nonprofit membership corporation for the purpose of defraying the cost of medical services or hospital care, or both, under any plan approved by the Director of Finance. Those persons may also authorize deductions to be made from their retirement allowance payments, in accordance with regulations established by the board, for the payment of contributions for any health benefit plan coverage for which they may be eligible under the provisions of Chapter 1 (commencing with Section 22750) of Part 5 of Division 5 of Title 2 of this code.

SEC. 10. Section 14876 of the Government Code is amended to read:

14876. (a) Pressmen, typographers, linotypers, compositors, bookbinders, lithographers, engravers, apprentices and assistants and all other employees of the Office of State Printing employed in allied work shall be paid on an hourly wage basis. The basic wage of those employees shall be the prevailing hourly wage paid to persons identified by the Department of Personnel Administration to be in similar and comparable employment by private printers in the major metropolitan areas in California. The Department of Personnel Administration shall accept and give validity to certified copies of agreed upon contracts

submitted by either the employer, the employer group, or the employee organization.

The Department of Personnel Administration shall survey only major employers where there are agreed upon contracts. If any agreed upon contract contains any provision or provisions that do not reflect the actual practice of the employer, the Department of Personnel Administration shall disregard the provision or provisions.

If the Department of Personnel Administration finds that salary relationships between surveyed classes do not accurately reflect relationships in duties and responsibilities of employees of the Office of State Printing, the department shall adjust those wage rates on an equitable basis notwithstanding the survey findings.

As used in this section, prevailing wages and prevailing benefits means wages and benefits arrived at through negotiation between an employer or employer organization and an employee organization that is the bona fide representative of the employer's employees and certified as the bona fide representative by the Director of Industrial Relations. In order to be so certified, the employee organization shall be free from employer influence and domination.

(b) In addition to these wages, and the rights and privileges afforded state employees under the provisions of the State Civil Service Act, and other statutes, there shall be paid to each employee of the Office of State Printing, either directly or to a health and welfare fund on his or her behalf, an amount equal to the prevailing individual contributions paid to health and welfare plans for employees in similar and comparable employment by private printers in the major metropolitan areas. Where those contracts do not disclose the dollar value of health and welfare benefits, the state shall provide the same or substantially the same level of benefits as provided for in the agreed upon contracts. Any adjustments made pursuant to subdivisions (a) and (b) of this section shall be effective as of March 1, 1977, and each March 1, thereafter.

(c) As an alternative to subdivision (b), a person first employed to any position described in subdivision (a) after October 1, 1977, may elect to become an ''employee'' as defined in paragraph (5) of subdivision (a) of Section 22772 within 90 days of commencing that employment.

Any person who is a member of a health and welfare plan described in subdivision (b) who loses eligibility for participation in the plan, or if the plan of which the person is a member ceases to exist, that person may elect to become an ''employee,'' as defined in paragraph (5) of subdivision (a) of Section 22772, within 90 days of the date that eligibility is lost or the plan ceases to exist.

(d) In no instance shall the wages and the health and welfare contributions paid by the state to the persons covered under this section be less than the dollar amount paid as of the effective date of this section.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 11. Section 16391.1 of the Government Code is amended to read:

16391.1. The Controller may transfer to the State Pay Roll Revolving Fund the contributions required by Sections 20751, 20752, 20782, 20783, 22881, and 22883, and upon certification by the Board of Administration of the Public Employees' Retirement System in accordance with Sections 20754 and 20784, may transfer from the State Pay Roll Revolving Fund to the Public Employees' Retirement Fund and the Old Age and Survivors' Insurance Revolving Fund the amounts of contributions so certified.

SEC. 12. Section 19849.15 of the Government Code is amended to read:

19849.15. (a) Notwithstanding Section 22846, the state employer shall, upon the death of an employee while in state service, continue to pay employer contributions for health, dental, and vision benefits for a period not to exceed 120 days beginning in the month of the employee's death. The surviving spouse or other eligible family member shall be advised of all rights and obligations during this period regarding the continuation of health and dental benefits as an annuitant by the Public Employees' Retirement System. The surviving spouse or other eligible family member shall also be notified by the department during this period regarding COBRA rights for the continuation of vision benefits.

(b) This section shall apply to state employees in state bargaining units that have agreed to this section in a memorandum of understanding, state employees excluded from the definition of ''state employee'' in subdivision (c) of Section 3513, and officers or employees of the executive branch of state government who are not members of the civil service.

SEC. 13. Section 19871 of the Government Code is amended to read:

19871. (a) Except as provided in Section 19871.2, when a state officer or employee is temporarily disabled by illness or injury arising out of and in the course of state employment, he or she shall become entitled, regardless of his or her period of service, to receive industrial disability leave and payments for a period not exceeding 52 weeks within two years from the first day of disability. These payments shall be in the amount of the employees full pay less withholding based on his

or her exemptions in effect on the date of his or her disability for federal income taxes, state income taxes, and social security taxes not to exceed 22 working days of disability subject to Section 19875. Thereafter, the payment shall be two-thirds of full pay. Payments shall be additionally adjusted to offset disability benefits, excluding those disability benefits payable from the State Teachers' Retirement System, the employee may receive from other employer-subsidized programs, except that no adjustment may be made for benefits to which the employee's family is entitled up to a maximum of three-quarters of full pay. Contributions to the Public Employees' Retirement System or the State Teachers' Retirement System shall be deducted in the amount based on full pay. Discretionary deductions of the employee including those for coverage under a state health benefits plan in which the employee is enrolled shall continue to be deducted unless canceled by the employee. State employer contributions to the Public Employees' Retirement System and state employer normal retirement contributions to the State Teachers' Retirement System shall be made on the basis of full pay and the state contribution pursuant to Sections 22871 and 22885 because of the employee's enrollment in a health benefits plan shall continue.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 14. Section 21450 of the Government Code is amended to read:

21450. This system shall provide to any member who requests materials relating to retirement, a written explanation of the effects, if any, of each possible decision relating to the selection of optional settlements, beneficiaries, and survivor benefits upon health benefits that are provided pursuant to Part 5 (commencing with Section 22750).

SEC. 15. Section 21506 of the Government Code is amended to read:

21506. Any monthly allowance payable to a person, that had accrued and remained unpaid at the time of his or her death, or any uncashed warrant issued prior to the date of death of the person that has been returned to this system, or any balance of prepaid complementary health premiums received pursuant to Section 21691 or prepaid complementary annuitant health plan premiums received pursuant to Section 22802, shall be paid in the following order:

(a) In the event of the death of a retired person, to one of the following:

(1) The beneficiary entitled to payment in accordance with an optional settlement chosen by the member.

(2) The survivor entitled to payment of the survivor continuance benefit provided under Section 21624.

(3) The beneficiary entitled to receive the lump-sum death benefit provided upon death of a retired person if the person had not chosen an optional settlement and there was no survivor who was entitled to receive the survivor continuance benefit.

(b) In the event of the death of a person receiving a survivor benefit, that benefit shall be paid to the beneficiary designated by the survivor of a member under Section 21491.

(c) If there is no beneficiary entitled to receive payment under either subdivision (a) or (b), the benefit shall be paid to either the estate of the deceased person or the duly authorized representative or representatives of the estate upon receipt by this system of a court order appointing an executor, administrator, or personal representative. If the estate does not require probate and the deceased person had a trust, benefits may, in the judgment of the board, be paid to the successor trustee as named in the trust.

(d) If there is no beneficiary entitled to receive payment of benefits under subdivision (a), (b), or (c), the benefits shall be paid to the surviving next of kin of the person pursuant to the order of distribution specified in Section 21493.

SEC. 16. Section 21551 of the Government Code is amended to read:

21551. Notwithstanding any other provision of this part, the benefits payable to a surviving spouse pursuant to Sections 21541, 21546, 21547, 21548, and Article 3 (commencing with Section 21570), do not cease upon remarriage if the remarriage occurs on or after September 19, 1989, for surviving spouses of deceased state members, January 1, 1991, for surviving spouses of deceased school members, upon the date a contracting agency elected to be subject to this section for deceased local members, or January 1, 2000, for spouses of deceased local members if the contracting agency has not elected to be subject to this section. Any surviving spouse who elected the reduction specified in Section 21500 as it read prior to January 1, 2000, shall be restored to the lifetime allowance to which he or she was originally entitled effective September 19, 1989, for state members, January 1, 1991, for school members, upon the date a contracting agency elected to be subject to this section, or January 1, 2000, if the contracting agency has not elected to be subject to this section.

Pursuant to Section 22822, the surviving spouse who remarries may not enroll his or her new spouse or stepchildren as family members under the continued health benefits coverage of the surviving spouse.

Any surviving spouse whose allowance has been discontinued as a result of remarriage prior to the effective date of this section shall have that allowance restored and resumed on January 1, 2000, or the first of the month, following receipt by the board of a written application from the spouse for resumption of the allowance, whichever is later. The amount of the benefits due shall be calculated as though the allowance had never been reduced or discontinued because of remarriage, and is not payable for the period between the date of discontinuance because of remarriage and January 1, 2000. The board has no duty to identify, locate, or notify a spouse who previously had his or her allowance discontinued because of remarriage.

SEC. 17. Section 21635 of the Government Code is amended to read:

21635. Notwithstanding any other provisions of this part, survivor continuance allowances payable to surviving spouses upon death after retirement of a member do not cease upon remarriage if the remarriage occurs on or after January 1, 1985, in the case of local members of contracting agencies that elected to be subject to this section, or all members on or after January 1, 2000. However, pursuant to Section 22822, the surviving spouse may not add the new spouse or stepchildren as family members under the continued health benefits coverage of the surviving spouse. The survivor continuance allowance shall be restored if that allowance has been discontinued upon the spouse's remarriage prior to January 1, 2000.

(a) The allowance shall be resumed on January 1, 2000, or the first of the month, following receipt by the board of a written application from the spouse for resumption of the allowance, whichever is later.

(b) The amount of the benefits due shall be calculated as though the allowance had never been discontinued because of remarriage, and is not payable for the period between the date of discontinuance because of remarriage and the effective date of resumption.

(c) The board has no duty to identify, locate, or notify a spouse who previously had his or her allowance discontinued because of remarriage.

SEC. 18. Section 21635.5 of the Government Code is amended to read:

21635.5. (a) Notwithstanding any other provision of this part, on and after the effective date of this section, the remarriage of the surviving spouse of a deceased local safety member who was a firefighter, or peace officer as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whose death after retirement was due to injuries which resulted in industrial disability retirement, may not result in the reduction or cessation of any survivor continuance if the remarriage occurs on or after January 1, 1998. However, pursuant to Section 22822, the surviving spouse may not add the new spouse or

stepchildren as family members under the continued health benefits coverage of the surviving spouse.

(b) The surviving spouse of a deceased retired local safety member whose death after retirement was due to injuries which resulted in industrial disability retirement who previously lost entitlement due to remarriage shall be entitled to resume payment of the benefit effective either on January 1, 1999, or the first of the month following receipt by the board of a written application for resumption of benefits, whichever date is later. The amount of the benefit payable shall be calculated as though the benefit had been paid without interruption from the date of remarriage through the benefit resumption effective date.

(c) The board has no duty to identify, locate, or notify a remarried spouse who previously lost entitlement about the resumption of benefits provided in this section. The board has no duty to provide the name or address of any remarried spouse to any person, agency, or entity for the purpose of notifying those who may be eligible under this section.

(d) Nothing in this section may be construed to imply that the benefits addressed will be paid retroactively.

SEC. 19. Section 21690 of the Government Code is repealed.

SEC. 20. Section 21691 of the Government Code is repealed.

SEC. 21. Section 21692 of the Government Code is repealed.

SEC. 22. Part 5 (commencing with Section 22750) is added to Division 5 of Title 2 of the Government Code, to read:

PART 5. THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT

CHAPTER 1. PUBLIC EMPLOYEES' HEALTH BENEFITS

Article 1. General Provisions

22750. This part may be cited as the Public Employees' Medical and Hospital Care Act. As used in any contract or statute, the term ''Meyers-Geddes State Employees' Medical and Hospital Care Act'' shall be construed to refer to and mean the Public Employees' Medical and Hospital Care Act.

22751. It is the purpose of this part to do all of the following:

(a) Promote increased economy and efficiency in state service.

(b) Enable the state to attract and retain qualified employees by providing health benefit plans similar to those commonly provided in private industry.

(c) Recognize and protect the state's investment in each permanent employee by promoting and preserving good health among state employees.

22753. The provisions of this part shall be controlling over any memorandum of understanding reached pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, except as otherwise provided by this part.

22755. The provisions of this part shall become operative with respect to employees and annuitants of the University of California upon filing with the board a resolution adopted by the Regents of the University of California electing to be subject to the provisions of this part.

Article 2. Definitions

22760. ''Annuitant'' means:

(a) A person who has retired within 120 days of separation from employment and who receives a retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(b) A surviving family member receiving an allowance in place of an annuitant who has retired as provided in subdivision (a), or as the survivor of a deceased employee under Section 21541, 21546, 21547, or 21547.7, or similar provisions of any other state retirement system.

(c) A person who has retired within 120 days of separation from employment with a contracting agency as defined in Section 22768 and who receives a retirement allowance from the retirement system provided by the employer, or a surviving family member who receives the retirement allowance in place of the deceased.

(d) A judge who receives the benefits provided by subdivision (e) of Section 75522.

(e) A person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) A Member of the Legislature or an elective officer of the state whose office is provided by the California Constitution, who has at least eight years of credited service, and who meets the following conditions:

(1) Permanently separates from state service on or after January 1, 1988, and not more than 10 years before or 10 years after his or her minimum age for service retirement, or is an inactive member of the Legislators' Retirement System pursuant to Section 9355.2.

(2) Receives a retirement allowance under a state retirement system supported in whole or in part by state funds other than the University of California Retirement System.

(g) An exempt employee who meets all of the following conditions:

(1) Has at least 10 years of credited state service that includes at least two years of credited service while an exempt employee.

(2) Permanently separates from state service on or after January 1, 1988, and not more than 10 years before or 10 years after his or her minimum age for service retirement.

(3) Receives a retirement allowance under a state retirement system supported in whole or in part by state funds other than the University of California Retirement System.

(h) A person receiving a survivor allowance pursuant to Article 3 (commencing with Section 21570) of Chapter 14 of Part 3 provided that he or she was eligible to enroll in a health benefit plan on the date of the member's death, on whose account the survivor allowance is payable.

(i) (1) A family member of a deceased retired member of the State Teachers' Retirement Plan, if the deceased member meets the following conditions:

(A) Retired within 120 days of separation from employment.

(B) Retired before the member's school employer elected to contract for health benefit coverage under this part.

(C) Prior to his or her death, received a retirement allowance that did not provide for a survivor allowance to family members.

(2) The family member must elect coverage as an annuitant within one calendar year from the date that the deceased member's school employer elected to contract for health benefit coverage under this part.

22762. ''Board'' means the Board of Administration of the Public Employees' Retirement System.

22764. ''Carrier'' means a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner, a medical society or other medical group, a nonprofit membership corporation lawfully operating under Section 10270.5 of the Insurance Code, a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act (42 U.S.C. Sec. 201 et seq.) that is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.

22766. ''Complementary annuitant premium'' means the additional amount to be paid by an annuitant whose allowance falls below the premium required to maintain enrollment in the chosen health benefit plan.

22768. ''Contracting agency'' means an entity that meets the eligibility criteria set forth in Section 22920 that has elected to be subject to this part pursuant to Section 22922.

22770. ''Domestic partner'' means an adult in a domestic partnership, as defined in Section 22771, with an employee or annuitant

of an employer subject to this part, who is eligible for enrollment pursuant to Section 22818.

22771. A ''domestic partnership'' means 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.

22772. (a) ''Employee'' means:

(1) An officer or employee of the state or of any agency, department, authority, or instrumentality of the state, including the University of California.

(2) An employee who is employed by a contracting agency, including, but not limited to, an officer or official of a contracting agency if the officer or official participates in the retirement system provided by the employer.

(3) An annuitant receiving a retirement allowance pursuant to Section 21228 who is employed by a contracting agency.

(4) A teaching associate, lecturer, coach, or interpreter employed by the California State University who is appointed to work in an academic year classification for at least six weighted teaching units for one semester, or for at least six weighted teaching units for two or more consecutive quarter terms. This paragraph does not apply to a state member employed by the California State University, unless provided for in a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 or authorized by the Trustees of the California State University for employees excluded from collective bargaining.

(5) All employees in job classes specified in subdivision (a) of Section 14876.

(b) Except as otherwise provided by this part, ''employee'' does not include persons employed on an intermittent, irregular, or less than half-time basis, or employees similarly situated.

22773. ''Employer'' means the state or any contracting agency that is subject to this part.

22774. ''Exempt employee'' means an employee exempt from civil service pursuant to subdivision (a), (c), (f), or (g) of Section 4 of Article VII of the California Constitution, or an exempt employee of the Attorney General or Legislative Counsel appointed pursuant to subdivision (m) of Section 4 of Article VII of the California Constitution.

22775. ''Family member'' means any of the following:

(a) An employee's or annuitant's spouse and any unmarried child, including an adopted child, a stepchild, or recognized natural child. The

board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(b) Notwithstanding any other provision of law, a domestic partner of an employee or annuitant shall be considered a family member for purposes of Section 22810, subdivision (a) of Section 22814, Sections 22822, 22830, 22837, 22841, 22842, 22843, 22844, subdivision (a) of Section 22846, and Sections 22847, 22863, 22871, 22879, 22890, 22911, and 22937.

22777. ''Health benefit plan'' means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.

22778. ''Medicare health benefit plan'' means a health benefit plan that provides benefits in coordination with Medicare Parts A and B, including, but not limited to, a managed Medicare health benefit plan providing coverage through the Medicare+Choice program or a Medicare supplement health benefit plan that provides coverage in coordination with the traditional Medicare program.

22779. ''Out-of-state employee'' means an employee permanently assigned to perform his or her duties outside of the state. An employee is permanently assigned out-of-state if the assignment is intended to exceed four months.

22781. ''Prefunding'' means the making of periodic payments by an employer to partially or completely amortize the unfunded actuarial obligation of the employer for health benefits provided to annuitants and their family members.

22783. ''School employer'' means a contracting agency that is a school district, county board of education, personnel commission of a school district, a county superintendent of schools, or a community college district.

22785. ''Special district'' means a nonprofit, self-governed public agency located within the state, comprised solely of public employees, and performing a governmental function.

22787. ''System'' means the California Public Employees' Retirement System.

Article 3. The Board of Administration

22790. The provisions of this part shall be administered by the board. The members of the board shall receive no salary for performance of their duties and responsibilities under this part, but shall be reimbursed for actual and necessary expenses incurred in connection therewith.

22792. All laws governing the organization, procedures, and administrative duties and responsibilities of the board shall be applicable to the board in its administration of the provisions of this part, to the

extent that they are not in conflict with or inconsistent with the provisions of this part.

22793. The board shall, in accordance with this part, approve health benefit plans, and may contract with carriers offering health benefit plans.

22794. The board shall have all powers reasonably necessary to carry out the authority and responsibilities expressly granted or imposed upon it under this part.

22795. Irrespective of the provisions of Sections 1090 and 1091, a board member who is an officer of a life insurer may participate in all board activities in administering the provisions of this part, except that he or she may not vote on the question of whether a contract should be entered into or approval should be given concerning any health benefit plan in which the board member has a financial interest, as defined in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

22796. (a) The board shall, pursuant to the Administrative Procedure Act, adopt all necessary rules and regulations to carry out the provisions of this part including, but not limited to, any of the following:

(1) Regulations establishing the following:

(A) The scope and content of a basic health benefit plan.

(B) Reasonable minimum standards for health benefit plans.

(C) The time, manner, method, and procedures for determining whether approval of a health benefit plan should be withdrawn.

(2) Regulations pertaining to any other matters that the board may be expressly authorized or required to provide for by rule or regulation by the provisions of this part.

(b) In adopting rules and regulations, the board shall be guided by the needs and welfare of individual employees, particular classes of employees, the state and contracting agencies, as well as prevailing practices in the field of medical and hospital care.

22797. The board or an authorized representative may perform audits of each employer and may, at a specified time and place, require the employer to provide information or make available for examination and copying books, papers, data, and records, including, but not limited to, personnel and payroll records, as deemed necessary by the board to determine compliance with the provisions of this part. The information obtained from an employer shall remain confidential.

Article 4. Eligibility

22800. (a) An employee or annuitant is eligible to enroll in an approved health benefit plan, in accordance with this part and the regulations of the board.

(b) Regulations may provide for the exclusion of employees on the basis of the nature, conditions, and type of their employment, including, but not limited to, short-term appointments, seasonal or intermittent employment, and employment of a like nature. However, no employee may be excluded solely on the basis of the hazardous nature of the employment.

22802. (a) An annuitant whose retirement allowance is not sufficient to pay his or her required contribution for the health benefit plan in which he or she is enrolled may only remain enrolled if the annuitant pays to the board the balance of the contributions plus the related administrative costs, as determined by the board.

(b) (1) The annuitant shall pay the complementary annuitant premium by remitting to the board quarterly payments in advance, or by alternative monthly payment as determined by the board.

(2) The board may charge each annuitant who elects to pay the complementary annuitant premium an initial setup charge and a monthly maintenance charge, in amounts sufficient to ensure the ongoing support of the complementary annuitant premium program.

(3) If payments are not received by the 10th of the month for the following month, coverage shall be terminated and may not be resumed until the next open enrollment period.

(c) Upon receipt of a written application, the benefits provided by this section shall commence on the first day of the month following receipt of the application and the payment required by the board.

(d) The board has no duty to identify, locate, or notify any annuitant who may be eligible for the benefit provided by this section.

(e) Any complementary annuitant premium or any balance of unpaid health benefit plan premiums that accrues and remains unpaid at the time of the death of an annuitant shall be paid in accordance with the sequence prescribed in Section 21506.

(f) All moneys received pursuant to this section shall be deposited in the Public Employees' Contingency Reserve Fund in the account provided by subdivision (e) of Section 22910.

22803. An out-of-state employee shall be eligible for enrollment, in accordance with reasonable rules as the board may prescribe, to receive the benefits provided by this part.

22805. An employee receiving full-time service credit pursuant to Section 20900 may continue enrollment in a health benefit plan.

22806. (a) With respect to state officers and employees, a permanent intermittent employee who has an appointment of more than six months and works at least half-time shall be eligible to enroll in a health benefit plan within 60 calendar days after having been credited with a minimum of 480 paid hours within a designated six-month period. The designated six-month periods are January 1 to June 30, inclusive,

and July 1 to December 31, inclusive, of each calendar year. To continue benefits, a permanent intermittent employee must be credited with a minimum of 480 paid hours in a designated six-month period or 960 paid hours in two consecutive periods.

(b) Permanent intermittent employees who are represented by State Bargaining Unit 6 may enroll in a health benefit plan within 60 calendar days following graduation from the academy of the Department of Corrections or the Department of the Youth Authority. To continue benefits, a permanent intermittent employee must be credited with a minimum number of hours, as provided in subdivision (a).

22807. (a) Notwithstanding subdivision (b) of Section 22772, a contracting agency may, by resolution filed with the board, deem all permanent or regular employees, except members of the State Teachers' Retirement Plan, who have an appointment of six months or longer but are employed less than half-time, to be employees subject to this part.

(b) Notwithstanding subdivision (b) of Section 22772, a contracting agency with employees who are members of the State Teachers' Retirement Plan may, by resolution filed with the board, deem any of the following to be employees subject to this part:

(1) Regular, permanent, probationary, or temporary employees or substitutes who have an appointment for at least a semester, for six months, or for half of the school year, but are employed less than half-time.

(2) Substitutes who have an appointment for 100 days or more in the school year.

22808. An employee enrolled in a health benefit plan under this part shall be entitled to have his or her coverage and the coverage of any family members continued for the duration of a leave of absence, upon his or her application and upon assuming payments of the contributions otherwise required of the employer, if any of the following apply:

(a) A leave of absence is granted to the employee without pay under the State Civil Service Act and the rules or regulations of the Department of Personnel Administration, or other comparable leave.

(b) The employee is laid off and has not yet obtained other employment, for a period of up to one year.

(c) The employee is employed by the California State University and is granted a leave of absence for more than half-time.

22809. An employee of a contracting agency and his or her family members may continue enrollment in a health benefit plan under this part if the employee is granted a leave of absence by the contracting agency for military duty. The coverage may continue for up to one year.

22810. A Member of the Legislature may enroll in a health benefit plan. The contributions of the member shall be the total cost of his or her

coverage and the coverage of any family members, less the amount contributed pursuant to Section 8901.6 by the state.

22811. Notwithstanding any other provision of this part, a former Member of the Legislature who has served six or more years as a Member of the Legislature may elect, within 60 days after permanent separation from state service, to enroll or continue enrollment in a health benefit plan and dental care plan provided to annuitants. Upon that election, the former member shall pay the total premiums related to that coverage and an additional 2 percent thereof for the administrative costs incurred by the board and the Department of Personnel Administration in administering this section.

The health and dental benefits shall be provided without discrimination as to premium rates or benefits coverage. A person who subsequently terminates his or her coverage under this section may not reenroll pursuant to this section.

22812. (a) A former legislative employee who separates from employment while enrolled in a health benefit plan provided by his or her employer, by reason of layoff, involuntary termination, or retirement may enroll in a health benefit plan within 60 days of separation from employment and, thereupon, shall be deemed to have been enrolled on the date of the separation from employment.

(b) An eligible survivor of a legislative employee who was enrolled in a health benefit plan provided by the employer at the time of death may, within 60 days of the death of the employee, enroll in a health benefit plan and, thereupon, shall be deemed to have been enrolled on the date of the employee's death.

22814. (a) A judge who retires pursuant to Chapter 11 (commencing with Section 75000) of Title 8, but is not yet receiving a pension, may continue his or her coverage and the coverage of any family members for the duration of the leave of absence, upon his or her application and upon assuming payment of the contributions otherwise required of the employer.

(b) (1) A judge who retires pursuant to subdivision (b) of Section 75521 and has not attained 65 years of age may continue his or her coverage and the coverage of any family members upon assuming payment of the contributions otherwise required of the employer. The judge shall also pay an additional 2 percent of the premium amount to cover administrative expenses incurred by the system or the Department of Personnel Administration.

(2) An election to continue coverage under this subdivision shall be made within 60 days of permanent separation. A retired judge who cancels that coverage may not reenroll.

(3) Upon attaining 65 years of age, a retired judge who has continuous and uninterrupted coverage pursuant to this subdivision shall be entitled to the applicable employer contribution.

22815. (a) The following persons are eligible for enrollment as provided in this section:

(1) A Member of the Legislature or an elective officer of the state whose office is provided by the California Constitution who meets all of the following conditions:

(A) Has at least eight years of credited service.

(B) Permanently separates from state service on or after January 1, 1988, and more than 10 years before his or her minimum age for service retirement, or is an inactive member of the Legislators' Retirement System pursuant to Section 9355.2.

(C) Elects to remain a member of a state retirement system supported in whole or in part by state funds, other than the University of California Retirement System.

(2) An exempt employee who meets all of the following conditions:

(A) Has at least 10 years of credited state service that includes at least two years of credited service while an exempt employee.

(B) Permanently separates from state service on or after January 1, 1988, and more than 10 years before his or her minimum age for service retirement.

(C) Elects to remain a member of a state retirement system supported in whole or in part by state funds, other than the University of California Retirement System.

(b) During the period he or she is not yet receiving a retirement allowance, a person described by subdivision (a) may continue enrollment in a health benefit plan or dental care plan without discrimination as to premium rates or benefit coverage, upon assuming payment of the contributions otherwise required of the former employer on account of his or her enrollment and the employee contribution. The person shall also pay an additional 2 percent of the premium amount to cover administrative expenses incurred by the system or the Department of Personnel Administration. An election to continue coverage under this section shall be made within 60 days of permanent separation.

(c) A person who receives coverage pursuant to this subdivision, and subsequently terminates that coverage, may not be allowed to reenroll and may not enroll as an annuitant pursuant to subdivision (d).

(d) Upon retirement and receipt of a retirement allowance, a person described in subdivision (b) may elect to continue enrollment in a health benefit plan or dental care plan without discrimination as to premium rates or benefit coverage, at which time the state shall assume payment of the employer contribution and the person shall thereafter be deemed an annuitant.

(e) The board has no duty to locate or notify any person who may be eligible to enroll pursuant to this section.

22816. (a) A person who meets all of the criteria of an annuitant, as defined in subdivision (f) or (g) of Section 22760, other than the condition of receiving a retirement allowance under a retirement system supported in whole or in part by state funds, may continue enrollment in a health benefit plan or dental care plan provided to annuitants without discrimination as to premium rates or benefits coverage, upon assuming payment of the contributions otherwise required of the former employer on account of his or her enrollment and the employee contribution. The person shall also pay an additional 2 percent of the premium amount to cover administrative expenses incurred by the system or the Department of Personnel Administration. An election to continue coverage under this section shall be made within 60 days of permanent separation.

(b) A person who receives coverage pursuant to this subdivision who subsequently terminates that coverage may not reenroll. However, termination under this subdivision does not affect an annuitant's rights under Section 22817. The benefits authorized by Section 22817 and this section are separate and distinct benefits.

(c) The board has no duty to locate or notify any person who may be eligible to enroll pursuant to this section.

22817. (a) An annuitant, as defined in subdivision (f) or (g) of Section 22760, may, upon assuming payment of the employee contribution, enroll in a health benefit plan or dental care plan without discrimination as to premium rates or benefit coverage, at which time the state shall assume payment of the employer contribution.

(b) The board has no duty to locate or notify any person who may be eligible to enroll pursuant to this section.

22818. (a) The following persons are eligible to enroll their domestic partner as a family member in a health benefit plan:

(1) Employees of a contracting agency that has amended its contract with the board to elect to provide health care coverage to the domestic partners of its employees and annuitants, pursuant to Section 22929.

(2) State employees who are members of a bargaining unit or are retired from a bargaining unit if there is a signed memorandum of understanding between the state and the recognized employee organization to adopt the benefits accorded under this section, and the Department of Personnel Administration makes this section simultaneously applicable to all eligible annuitants retired from the bargaining unit.

(3) Members of the system who are employed by the Assembly, the Senate, or the California State University, only if the Assembly Committee on Rules, the Senate Committee on Rules, or the Board of

Trustees of the California State University, respectively, makes this section applicable to its employees.

(4) Members of the system who are state employees of the judicial branch, and judges and justices who are members of the Judges' Retirement System or the Judges' Retirement System II, if the Judicial Council makes this section applicable to those persons.

(5) Employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1) upon adoption by the Department of Personnel Administration of regulations to implement employee benefits under this section for those persons. Regulations adopted or amended pursuant to this paragraph are not subject to review and approval by the Office of Administrative Law pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2) and shall become effective immediately upon filing with the Secretary of State.

(b) In order to receive any benefit provided by this part, an employee or annuitant shall provide the board all of the following:

(1) 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 Section 298.5 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 22771.

(2) A signed statement indicating that the employee or annuitant agrees that he or she may be required to reimburse the employer, the health benefit plan, and the system for any expenditures made for medical claims, processing fees, administrative expenses, 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 22771.

22818.5. (a) A domestic partner shall be considered a family member for purposes of becoming an annuitant pursuant to Section 22760.

(b) A child of the surviving domestic partner who was eligible for enrollment in a health benefit plan as a family member prior to the death of the employee or annuitant shall be eligible for health coverage under this part as a family member if the surviving domestic partner is enrolled in a health benefit plan.

(c) A surviving domestic partner of a deceased employee or annuitant may not enroll additional family members in a health benefit plan.

22819. (a) A family member of a deceased employee of a contracting agency who is validly enrolled or is eligible for enrollment hereunder on the date of the employee's death is deemed to be an annuitant under Section 22760, pursuant to regulations prescribed by the board. A domestic partner may not become an annuitant pursuant to this section.

(b) A contracting agency shall remit the amounts required under Section 22901 as well as the total amount of the premium required from the employer and enrollees hereunder in accordance with regulations of the board. Enrollment of the annuitant and eligible family members shall be continuous following the death of the employee, or the effective date of enrollment, so long as the surviving family members meet the eligibility requirements of Section 22775 and regulations pertinent thereto. Failure to timely pay the required premiums and costs or the cancellation of coverage by the annuitant shall terminate coverage without the option to reenroll. The contracting agency may elect to require the family members to pay all or any part of the employer premium for enrollment.

(c) This section shall apply to a contracting agency only upon the filing with the board of a resolution of its governing board electing to be subject to this section.

22820. (a) Upon the death, on or after January 1, 2002, of a firefighter employed by a county, city, city and county, district, or other political subdivision of the state, a firefighter employed by the Department of Forestry and Fire Protection, or a peace officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.39, 830.4, 830.5, 830.55, or 830.6 of the Penal Code, if the death occurred as a result of injury or disease arising out of and in the course of his or her official duties, the surviving spouse or other eligible family member of the deceased firefighter or peace officer, if uninsured, is deemed to be an annuitant under Section 22760 for purposes of enrollment. All eligible family members of the deceased firefighter or peace officer who are uninsured may enroll in a health benefit plan of the surviving spouse's choice. However, an unmarried child of the surviving spouse is not eligible to enroll in a health benefit plan under this section if the child was not a family member under Section 22775 and regulations pertinent thereto prior to the firefighter's or peace officer's date of death. The employer of the deceased firefighter or peace officer shall notify the board within 10 days of the death of the employee if a spouse or family member may be eligible for enrollment in a health benefit plan under this section.

(b) Upon notification, the board shall promptly determine eligibility and shall forward to the eligible spouse or family member the materials necessary for enrollment. In the event of a dispute regarding whether a

firefighter's or peace officer's death occurred as a result of injury or disease arising out of and in the course of his or her official duties as required under subdivision (a), that dispute shall be determined by the Workers' Compensation Appeals Board, subject to the same procedures and standards applicable to hearings relating to claims for workers' compensation benefits. The jurisdiction of the Workers' Compensation Appeals Board under this section is limited to the sole issue of industrial causation and this section does not authorize the Workers' Compensation Appeals Board to award costs against the system.

(c) (1) Notwithstanding any other provision of law, but except as otherwise provided in subdivision (d), the state shall pay the employer contribution required for enrollment under this part for the uninsured surviving spouse of a deceased firefighter or peace officer for life, and the other uninsured eligible family members of a deceased firefighter or peace officer, provided the family member meets the eligibility requirements of Section 22775 and regulations pertinent thereto.

(2) The contribution payable by the state for each uninsured surviving spouse and other uninsured eligible family members shall be adjusted annually and be equal to the amount specified in Section 22871.

(3) The state's contribution under this section shall commence on the effective date of enrollment of the uninsured surviving spouse or other uninsured eligible family members. The contribution of each surviving spouse and eligible family member shall be the total cost per month of the benefit coverage afforded him or her under the plan less the portion contributed by the state pursuant to this section.

(d) The cancellation of coverage by an annuitant, as defined in this section, shall be final without option to reenroll, unless coverage is canceled because of enrollment in an insurance plan from another source.

(e) For purposes of this section, ''surviving spouse'' means a husband or wife who was married to the deceased firefighter or peace officer on the deceased's date of death and for a continuous period of at least one year prior to the date of death.

(f) For purposes of this section, ''uninsured'' means that the surviving spouse is not enrolled in an employer-sponsored health plan under which the employer contribution covers 100 percent of the cost of health care premiums.

(g) The board has no duty to identify, locate, or notify any surviving spouse or eligible family member who may be or may become eligible for benefits under this section.

22822. No person is eligible for enrollment in a health benefit plan pursuant to this part as a family member if he or she becomes a family member of a surviving spouse of a deceased member of the system after the date of the member's death.

22823. (a) Notwithstanding Section 10270.5 of the Insurance Code, an employee who is enrolled in a board-approved health benefit plan sponsored by an employee organization that is the exclusive representative pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1) and who terminates his or her membership in the respective employee organization shall become ineligible for enrollment in the health benefit plan.

(b) Notwithstanding subdivision (a), the employee may continue enrollment in the employee organization health benefit plan until he or she is notified by the employee organization of the loss of eligibility. Upon notification of the loss of eligibility, the employee within 60 days may change his or her enrollment to another health benefit plan for which the employee is eligible.

22825. (a) An annuitant is not eligible to participate in a health benefit plan offered by the California Association of Highway Patrolmen unless the annuitant was enrolled in the California Highway Patrolmen Health Benefits Trust for a minimum of five years as an active employee.

(b) Notwithstanding subdivision (a), an annuitant that retires for disability before becoming eligible for service retirement may enroll in a health benefit plan offered by the California Association of Highway Patrolmen if otherwise eligible.

(c) Former members of the California State Police are eligible to participate in a health benefit plan offered by the California Association of Highway Patrolmen, pursuant to subdivision (a) or (b). Former members of the California State Police who transferred to the California Highway Patrol and retired before January 1, 2003, are exempt from the five-year requirement.

(d) This section only applies to persons who first became employees of the California Highway Patrol on or after January 1, 1994.

22826. For purposes of this part, service credit shall be determined according to the rules of the retirement system provided by the employer in which the employee participates. In the case of elected officials not eligible for participation in a retirement system, service credit shall be determined according to the number of years in office. In the elected official's final year of office, a completed term of office shall be sufficient to earn one year of service credit for that final year of office.

Article 5. Enrollment and Coverage

22830. (a) An employee or annuitant, under eligibility rules as prescribed by board regulations, may enroll in a health benefit plan

approved or maintained by the board either as an individual or for self and family.

(b) Enrollment shall serve as authorization of the deduction of the contributions required under this part from the salary of an employee or allowance of an annuitant.

22831. (a) An annuitant may, as provided by regulations of the board, continue his or her enrollment, enroll within 60 days of retirement, enroll within 60 days of the death of the member, or enroll during any future open enrollment period without discrimination as to premium rates or benefit coverage. If the survivor of an annuitant is also an annuitant as defined in this part, he or she may enroll within 60 days of the annuitant's death or during any future open enrollment period, as provided by regulations of the board.

(b) Board rules and regulations shall provide whatever provisions necessary to eliminate or minimize the impact of adverse selection because of the enrollment of annuitants that would affect any health benefit plans approved or maintained. This may include the reimbursement of surcharges for late enrollment in Part B of Medicare if the board determines that payment of the surcharge would be less costly than continued enrollment in a basic plan.

22832. A permanent intermittent employee and an employee who works less than full time may continue his or her enrollment while retired from state employment if he or she was enrolled prior to separation from state employment, and he or she lost eligibility prior to separation but continued his or her coverage under federal law.

22834. (a) An out-of-state employee who separates from service and becomes an annuitant may continue his or her enrollment in a board-approved out-of-state health benefit plan or may transfer to any other health benefit plan approved or maintained by the board, in which the employee would otherwise be eligible to enroll. He or she must enroll in that health benefit plan within 60 days in order for health benefits to continue.

(b) An annuitant who leaves this state and elects to reside in another state in which a health benefit plan is approved or maintained by the board may transfer his or her enrollment to that health benefit plan and shall be entitled to the employer contribution as provided in this part.

(c) When an out-of-state employee receiving benefits pursuant to Section 22803 is permanently reassigned to perform his or her duties within the state, the benefits may be continued only until the employee has had reasonable opportunity to enroll in a health benefit plan within the state that is approved or maintained by the board.

22836. An employee enrolled in a health benefit plan who is removed or suspended without pay and later reinstated or restored to duty on the ground that the removal or suspension was unjustified,

unwarranted, or illegal may not be deprived of coverage or benefits for the interim. Any contributions otherwise payable by the employer that were actually paid by the employee shall be restored to the same extent and effect as though the removal or suspension had not taken place, and any other equitable adjustments necessary and proper under the circumstances shall be made in premiums, claims, and other charges.

22837. In the case of the death of an employee after an application has been filed for the enrollment of family members, but prior to the effective date of coverage, the family members are deemed to have been covered on the date of the death of the employee. If one of the family members becomes an annuitant, enrollment shall continue without discrimination as to premium rates or benefit coverage.

22839. Thirty days prior to, or 30 days following, retirement and during the open enrollment period, a state employee enrolled in a flexible benefit plan administered by the state shall be given the option to enroll in a health benefit plan approved or maintained by the board and receive the applicable employer contribution, if the state employee would otherwise qualify as an annuitant.

22840. (a) Notwithstanding any other provision of law, a state employee participating in a flexible benefits program administered by the state, who either terminated enrollment in a health benefit plan approved or maintained by the board in reliance on other medical coverage or who was enrolled in a board-approved health benefit plan for self only, may enroll in a health benefit plan without regard to the open enrollment period for either of the following purposes:

(1) For self only or self and all eligible dependents, if the flexible cash option is discontinued.

(2) To add all eligible dependents, upon loss of coverage, where the flexible cash option has not been selected.

(b) Enrollment shall be requested within 60 calendar days of the loss of other coverage and submitted to the system by the employer. The effective date of enrollment shall be the first day of the month following the loss of other coverage. Enrollment shall entitle the employee to receive the benefit of the applicable employer contribution.

22841. (a) A transfer of enrollment from one health benefit plan to another may be made by an employee or annuitant at times and under conditions as may be prescribed by regulations of the board.

(b) In the case of a health benefit plan in which services are provided by a limited panel of physicians associated with the plan, it is recognized that it may be impossible or impractical to maintain acceptable physician-patient relationships with particular employees, annuitants, or family members. In those cases, the employee or annuitant may submit the question of ability to maintain adequate physician-patient relationships for consideration under the grievance procedure provided

pursuant to subdivision (d) of Section 22853. If the grievance procedure results in a determination that an adequate physician-patient relationship cannot reasonably be maintained, then the employee or annuitant may, in accordance with regulations of the board, change his or her enrollment to another health benefit plan without regard to physical condition, age, race, or other status.

22842. A change in coverage based on a change in the family status of an employee, annuitant, or family member enrolled in a health benefit plan may be requested by the employee or annuitant by filing an application within 30 days after the occurrence of the change in family status or at other times and according to conditions as may be prescribed by regulations of the board.

22843. If an employee or annuitant has a spouse or a domestic partner who is an employee or annuitant, each spouse or domestic partner may enroll as an individual. No person may be enrolled both as an employee or annuitant and as a family member. A family member may be enrolled in respect to only one employee or annuitant.

22844. Employees, annuitants, and family members who become eligible to enroll on or after January 1, 1985, for Part A and Part B of Medicare may not be enrolled in a basic health benefit plan. If the employee, annuitant, or family member is enrolled in Part A and Part B of Medicare, he or she may enroll in a Medicare health benefit plan. This section does not apply to employees and family members that are specifically excluded from enrollment in a Medicare health benefit plan by federal law or regulation.

22846. (a) The regulations of the board shall provide for the beginning and ending dates of coverage of employees, annuitants, and family members enrolled in a health benefit plan. The regulations may permit coverage to continue, in addition to any temporary extension of coverage otherwise authorized under this part, until the end of the pay period in which an employee is separated from service or until the end of the month in which an annuitant ceases to be entitled to an allowance. In case of the death of an employee or annuitant, the regulations may permit a temporary extension of the coverage of family members for a period of more than 30 days.

(b) Notwithstanding any other provision of this part, an employee terminating his or her service by voluntary separation or due to dismissal for cause, prior to eligibility for retirement, may extend enrollment until the end of the month following the month in which his or her service is terminated.

22847. (a) Subject to subdivisions (b) and (c), if the eligible family members of a deceased peace officer or firefighter of a contracting agency, as described in subdivision (a) of Section 22820, are validly enrolled under this part on the date of the employee's death, the

contracting agency shall continue to pay the employer contribution applicable to active employees for the continued enrollment of those eligible family members for a period not to exceed 120 days, beginning in the month of the employee's death.

(b) A contracting agency shall remit the amounts required under Section 22901 as well as the total amount of premium required from the employer under this part in accordance with regulations of the board. Enrollment of the eligible family members shall be continuous following the death of the employee.

(c) Notwithstanding subdivision (a), the contracting agency's obligation to pay the employer contribution pursuant to this section shall terminate upon either of the following:

(1) Enrollment of the eligible family members pursuant to Section 22820.

(2) A final determination of the board that the deceased employee's family members are not eligible to enroll or continue enrollment under this part.

(d) During the period that enrollment is continued pursuant to this section, the surviving spouse or eldest eligible family member shall retain the rights and obligations that otherwise would be applicable to the employee under this part.

22848. An employee or annuitant who is dissatisfied with any action or failure to act in connection with his or her coverage or the coverage of his or her family members under this part shall have the right of appeal to the board and shall be accorded an opportunity for a fair hearing. The hearings shall be conducted, insofar as practicable, pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3.

Article 6. Health Benefit Plans and Contracts

22850. (a) The board may, without compliance with any provision of law relating to competitive bidding, enter into contracts with carriers offering health benefit plans or with entities offering services relating to the administration of health benefit plans.

(b) The board may contract with carriers for health benefit plans or approve health benefit plans offered by employee organizations, provided that the carriers have operated successfully in the hospital and medical care fields prior to the contracting for or approval thereof. The plans may include hospital benefits, surgical benefits, inpatient medical benefits, outpatient benefits, obstetrical benefits, and benefits offered by a bona fide church, sect, denomination, or organization whose principles include healing entirely by prayer or spiritual means.

(c) Notwithstanding any other provision of this part, the board may contract with health benefit plans offering unique or specialized health services.

(d) The board may administer self-funded or minimum premium health benefit plans.

(e) The board may contract for or implement employee cost containment and cost reduction incentive programs that involve the employee, the annuitant, and family members as active participants, along with the carrier and the provider, in a joint effort toward containing and reducing the cost of providing medical and hospital health care services to public employees. In developing these plans, the board, in cooperation with the Department of Personnel Administration, may request proposals from carriers and certified public employee representatives.

(f) Notwithstanding any other provision of this part, the board may do any of the following:

(1) Contract for, or approve, health benefit 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 benefit 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 benefit plans exclusively for employees and annuitants of contracting agencies in addition to or in lieu of other health benefit 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 benefit 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.

(g) The board shall approve any employee association health benefit plan that was approved by the board in the 1987–88 contract year or prior, provided the plan continues to meet the minimum standards prescribed by the board. The trustees of an employee association health benefit plan are responsible for providing health benefit plan administration and services to its enrollees. Notwithstanding any other provision of this part, the California Correctional Peace Officer Association Health Benefits Trust may offer different health benefit plan designs with varying premiums in different areas of the state.

(h) Irrespective of any other provision of law, the sponsors of a health benefit plan approved under this section may reinsure the operation of the plan with an admitted insurer authorized to write disability insurance, if the premium includes the entire prepayment fee.

22851. The board may enter into any joint purchasing arrangement with private or public entities, if the arrangement does all of the following:

(a) Benefits persons receiving health coverage under this part.

(b) Does not restrict the authority of the board or the state.

(c) Does not jeopardize the system's tax status or its governmental plan status.

22852. (a) A contract for a health benefit plan shall be for a uniform term of at least one year and may be made automatically renewable in the absence of notice of termination by either party. Every contract for administrative services with respect to the operation of a self-funded health benefit plan administered by the board shall be on terms as the board deems necessary or desirable.

(b) The board shall determine the beginning and ending dates of a contract with the carrier of a health benefit plan and with an entity providing services in connection with the administration of a health benefit plan.

(c) Irrespective of an agreed upon termination date, the board may extend a contract for a reasonable period of time, subject to agreed upon terms and conditions.

22853. (a) Each contract shall contain a detailed statement of benefits offered and shall include maximums, limitations, exclusions, and other definitions of benefits as the board deems necessary or desirable.

(b) Except as otherwise provided by this part, a health benefit plan or contract may not exclude any person on account of physical condition, age, race, or other status. Except as otherwise provided by this part, transfer of enrollment to a health benefit plan shall be open to all employees and annuitants in accordance with Section 22841.

(c) A health benefit plan or contract shall offer to each employee or annuitant whose enrollment in the plan is terminated other than by cancellation of enrollment, voluntary separation from employment, or dismissal from employment for cause, the option to convert to an individual health benefits policy, without regard to health status, but within the time limit approved by the board. An employee or annuitant that exercises this option shall pay the full periodic charges of the individual policy according to the terms and conditions prescribed by the carrier and approved by the board.

(d) A health benefit plan or contract shall provide grievance procedures to protect the rights of employees and annuitants.

(e) The board shall provide a sufficient number of health benefit plans that provide chiropractic services so that every employee and annuitant has a reasonable opportunity to enroll in a health benefit plan that provides chiropractic services without prior referral by a physician.

22853.1. (a) A health benefit plan or contract shall provide coverage for a vaccine for acquired immune deficiency syndrome (AIDS) that is approved for marketing by the federal Food and Drug Administration and that is recommended by the United States Public Health Service.

(b) This section does not require a health benefit plan or contract to provide coverage for any clinical trials relating to an AIDS vaccine or for any AIDS vaccine that has been approved by the federal Food and Drug Administration in the form of an investigational new drug application.

(c) Nothing in this section is to be construed in any manner to limit or impede the board's power or responsibility to purchase the vaccine at the most cost-effective price.

22855. The board shall withdraw its approval of a health benefit plan if it finds that the plan or carrier is not in compliance with the standards prescribed therefor, that the plan or carrier has not paid or will be unable to pay claims accrued or to accrue, or for other good cause as shown. The board shall provide reasonable notice of its intention to withdraw approval of a health benefit plan to any carrier, employee organization, or organization of physicians that may be directly interested, to the persons enrolled in the health benefit plan, and to other persons and organizations as the board may deem proper. The notice shall state the effective date of, and reason for, the withdrawal of board approval. The approval of a health benefit plan may not be withdrawn until after the notice and after all interested parties have been afforded reasonable opportunity for public hearing on the question. The hearings shall be conducted, insofar as practicable, pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3.

22857. (a) Notwithstanding any other provision of law, the board may contract with carriers licensed and doing business in other states to provide health benefits for employees and annuitants who reside outside of this state. The contracts shall be on terms as the board deems necessary or desirable. The health benefit plans are not necessarily required to meet the minimum requirements of the board, as specified in board regulations, but shall provide appropriate safeguards for members.

(b) An out-of-state employee may enter into a group health benefit plan provided by an out-of-state health maintenance organization, group insurance policy, group service agreement, membership or subscription contract, or other similar group arrangement provided by a carrier for the purpose of providing, arranging, paying for, or reimbursing the cost of health benefits and that is in operation in the community or area where the employee's duties are usually performed. These contracts, plans, agreements, arrangements, or policies shall meet with the approval of, or meet standards approved by, the board.

22859. (a) A health benefit plan or contract may not provide any of the following:

(1) An exception for other coverage where the other coverage is entitlement to Medi-Cal or medicaid benefits.

(2) An exception for Medi-Cal or medicaid benefits.

(3) A benefits reduction if the person has entitlement to Medi-Cal or medicaid benefits.

(4) An exception for enrollment because of an applicant's entitlement to Medi-Cal or medicaid benefits.

(b) Each health benefit plan shall be considered in determining the third-party liability for medical expenses incurred by a Medi-Cal or a medicaid recipient.

22860. It is the policy of the Legislature that benefits provided by a health benefit plan be integrated with the benefits provided by federal or state plans for health care services for the aged in which there is federal or state financial participation. The board shall adopt rules and regulations necessary to implement this section. Notwithstanding any other provision of this part, those rules and regulations may establish exclusions and limitations with respect to benefits, different rates within health benefit plans for employees or annuitants eligible to benefits under other plans, or enrollment of those employees or annuitants in separate plans.

22863. (a) The board shall make available to employees and annuitants eligible to enroll in a health benefit plan information that will enable the employees or annuitants to exercise an informed choice among the available health benefit plans. Each employee or annuitant enrolled in a health benefit plan shall be issued an appropriate document setting forth or summarizing the services or benefits to which the employee, annuitant, or family members are entitled to thereunder, the procedure for obtaining benefits, and the principal provisions of the health benefit plan.

(b) The board shall compile and provide data regarding age, sex, family composition, and geographical distribution of employees and annuitants and make continuing study of the operation of this part, including, but not limited to, surveys and reports on health benefit plans, medical and hospital benefits, the standard of care available to employees and annuitants, and the experience of health benefit plans receiving contributions under this part with respect to matters such as gross and net cost, administrative cost, and utilization of benefits.

(c) The board shall, with the advice of and in consultation with persons or organizations having special skills or experience in the provision of health care services, study methods of evaluating and improving the quality and cost of health care services provided under this part.

22864. (a) Premiums charged for enrollment in a health benefit 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 premiums charged under any health benefit plan or 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 benefit plan or contract premium rate that would otherwise be applicable to that agency.

22865. Prior to the approval of proposed benefits and premium readjustments authorized under Section 22864, the board shall notify the Legislature, the Trustees of the California State University, and the Department of Personnel Administration of the proposed changes in writing.

22866. The board shall report to the Legislature annually, on November 1, regarding the success or failure of each health benefit plan. The report shall include, but not be limited to, the costs to the board and to participants, the degree of satisfaction of members and annuitants with the health benefit plans and with the quality of the care provided, as determined by a representative sampling of participants, and the level of accessibility to preferred providers for rural members who do not have access to health maintenance organizations.

22867. The provisions of this article do not supersede, modify, or in any manner alter or impair the effect of any provision of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or any provision of the Insurance Code. This article shall be interpreted and applied in a manner consistent with those provisions of the Business and Professions Code and the Insurance Code.

22869. Information disseminated by the board pursuant to Section 22863, and compliance with regulations of the board adopted pursuant to subdivision (a) of Section 22846 and Sections 22800 and 22831, shall be deemed to satisfy the requirements of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

Article 7. State Contributions

22870. (a) The state and each employee or annuitant shall contribute a portion of the cost of providing the benefit coverage afforded under the approved health benefit plan in which the employee or annuitant is enrolled.

(b) An annuitant is entitled to only one employer contribution. If more than one annuitant is receiving an allowance as the survivor of the same employee or annuitant, there shall be only one employer contribution with respect to all of those annuitants.

(c) The contribution of each employee and annuitant shall be the total cost per month of the benefit coverage afforded him or her under the health benefit plan or plans in which he or she is enrolled less the portion thereof to be contributed by the employer. The employer contribution for each employee or annuitant shall commence on the effective date of enrollment.

22871. (a) The employer contribution, with respect to each employee or annuitant who is in the employment of or retired from service with the state, including an academic position with the California State University, or is a survivor of that person, shall be adjusted by the Legislature in the annual Budget Act. Those adjustments shall be based on the principle that the employer contribution for each employee or annuitant shall be an amount equal to 100 percent of the weighted average of the health benefit plan premiums for an employee or annuitant enrolled for self-alone, during the benefit year to which the formula is applied, for the four health benefit plans that had the largest state enrollment, excluding family members, during the previous benefit year. For each employee or annuitant with enrolled family members, the employer shall contribute an additional 90 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four health benefit plans that had the largest state enrollment, excluding family members, during the previous benefit year. Only the enrollment of, and premiums paid by, state employees and annuitants enrolled in a basic health benefit plan shall be counted for purposes of calculating the employer contribution under this section.

(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 require the expenditure of funds, the provisions may not become effective unless approved by the Legislature.

22871.5. (a) Notwithstanding Section 22871, the employer contribution with respect to each excluded employee, as defined by subdivision (b) of Section 3527, who is otherwise eligible shall be determined by the Department of Personnel Administration subject to the appropriation of funds by the Legislature.

(b) Notwithstanding Section 22871, the employer contribution with respect to each state employee, as defined by subdivision (c) of Section 3513, who is otherwise eligible shall be determined through the collective bargaining process subject to the appropriation of funds by the Legislature.

22871.6. (a) Notwithstanding Section 22871, subdivision (b) of Section 22871.5, or any other provision of this article, the employer contribution with respect to employees in State Bargaining Unit 9 shall be as described in subdivision (b).

(b) Effective January 1, 2004, the employer contribution for each employee shall be an amount equal to 80 percent of the weighted average of the basic health benefit plan premiums for an active state civil service employee enrolled for self alone, during the benefit year to which the formula is applied, for the four basic health benefit plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four basic health benefit plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year.

(c) The employer contribution provided under this section is not applicable unless and until the effective date of the employee's enrollment in an approved health benefit plan.

(d) 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 require the expenditure of funds, the provisions may not become effective unless approved by the Legislature.

22871.7. (a) Notwithstanding Section 22871, subdivision (b) of Section 22871.5, or any other provision of this article, the employer contribution with respect to employees in State Bargaining Units 5 and 8 shall be as described in subdivision (b).

(b) (1) From January 1, 2004, to December 31, 2005, inclusive, the employer contribution for each employee shall be an amount equal to 80 percent of the weighted average of the basic health benefit plan

premiums for an active state civil service employee enrolled for self alone, during the benefit year to which the formula is applied, for the four basic health benefit plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four basic health benefit plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year.

(2) Beginning January 1, 2006, the employer contribution for each employee shall be an amount equal to 85 percent of the weighted average of the basic health benefit plan premiums for an active state civil service employee enrolled for self alone, during the benefit year to which the formula is applied, for the four basic health benefit plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four basic health benefit plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year.

(c) The employer contribution provided under this section is not applicable unless and until the effective date of the employee's enrollment in an approved health benefit plan.

(d) 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 require the expenditure of funds, the provisions may not become effective unless approved by the Legislature.

22871.8. (a) Notwithstanding Section 22871, subdivision (b) of Section 22871.5, or any other provision of this article, the employer contribution with respect to employees in State Bargaining Units 16 and 19 shall be as described in subdivision (b).

(b) (1) From January 1, 2004, to December 31, 2005, inclusive, the employer contribution for each employee shall be an amount equal to 80 percent of the weighted average of the basic health benefit plan premiums for an active state civil service employee enrolled for self alone, during the benefit year to which the formula is applied, for the four basic health benefit plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year.

For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four basic health benefit plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year.

(2) Beginning January 1, 2006, the employer contribution for each employee shall be an amount equal to 85 percent of the weighted average of the basic health benefit plan premium for an active state civil service employee enrolled for self alone, during the benefit year to which the formula is applied, for the four basic health benefit plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four basic health benefit plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year.

(c) The employer contribution provided under this section is not applicable unless and until the effective date of the employee's enrollment in an approved health benefit plan.

(d) 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 require the expenditure of funds, the provisions may not become effective unless approved by the Legislature.

22871.9. (a) Notwithstanding Section 22871, subdivision (b) of Section 22871.5, or any other provision of this article, the employer contribution with respect to employees in State Bargaining Units 1, 4, 10, 11, 14, 15, 17, 20, and 21 shall be as described in subdivision (b).

(b) Effective January 1, 2004, the employer contribution for each employee shall be an amount equal to 80 percent of the weighted average of the basic health benefit plan premiums for an active state civil service employee enrolled for self alone, during the benefit year to which the formula is applied, for the four basic health benefit plans that had the largest active state civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four basic health benefit plans that had the largest active

state civil service enrollment, excluding family members, during the previous benefit year.

(c) The employer contribution provided under this section is not applicable unless and until the effective date of the employee's enrollment in an approved health benefit plan.

(d) 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 require the expenditure of funds, the provisions may not become effective unless approved by the Legislature.

22872. If an out-of-state employee is enrolled in a health benefit plan, policy, contract, service agreement, or arrangement described in Section 22857 and elects to receive the benefits provided by this part, the state and the employee shall contribute and disburse a portion of the cost of providing the benefit coverage in the same amounts and in a like manner as is provided for contributions, withholdings, appropriations, and payments for health benefit plans under Sections 22871, 22880, 22881, 22883, 22885, and 22913. Disbursements may be made to any person, association, corporation, insurer, or other entity responsible for providing the benefit coverage, except that the state shall make no contribution to the Public Employees' Contingency Reserve Fund, for other than administrative expense, with respect to an out-of-state employee and the fund may not be made available to any extent or for any purpose other than payment of administrative costs with respect to the employee or the plan, policy, contract, service agreement, or arrangement in which he or she is enrolled under this part.

22873. (a) Notwithstanding Section 22871, a state employee first hired on or after January 1, 1985, may not be vested for the full employer contribution payable for annuitants unless he or she has 10 years of credited state service at the time of retirement. The employer contribution payable for annuitants with less than 10 years of service shall be prorated based on credited state service at the time of retirement. This section shall apply only to state employees who retire for service. For purposes of this section, ''state service'' means service rendered as an employee or an appointed or elected officer of the state, including all municipal, superior, and justice court services rendered by a justice of the Supreme Court or court of appeal, or by a judge of the superior court.

(b) This section does not apply to employees of the California State University or of the Legislature.

22874. (a) Notwithstanding Sections 22870, 22871, and 22873, a state employee, defined by subdivision (c) of Section 3513, who becomes a state member of the system after January 1, 1989, may not

receive any portion of the employer contribution payable for annuitants unless the person is credited with 10 years of state service at the time of retirement. This section shall apply only to state employees that retire for service. For purposes of this section, ''state service'' means service rendered as an employee of the state or an appointed or elected officer of the state for compensation.

(b) This section does not apply to employees of the California State University or the Legislature.

22875. (a) Notwithstanding Sections 22870, 22871, 22873, and 22874, a state employee who becomes a state member of the system after January 1, 1990, and is either excluded from the definition of a state employee in subdivision (c) of Section 3513, or a nonelected officer or employee of the executive branch of government who is not a member of the civil service, may not receive any portion of the employer contribution payable for annuitants, unless the employee is credited with 10 years of state service, as defined by this section, at the time of retirement.

(b) The percentage of the employer contribution payable for postretirement health benefits for an employee subject to this section shall be based on the completed years of credited state service at retirement as shown in the following table:

Credited Years of Service	Percentage of Employer Contribution
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20 or more	100

(c) This section shall apply only to state employees who retire for service.

(d) Benefits provided to an employee subject to this section shall be applicable to all future state service.

(e) For the purposes of this section, ''state service'' means service rendered as an employee or an appointed or elected officer of the state for compensation.

(f) This section does not apply to employees of the California State University or the Legislature.

22875.5. (a) If the state has assumed from a public agency a function and the related personnel, service rendered by that personnel for compensation as employees or appointed or elective officers of that public agency may not be credited as state service for the purposes of Section 22874 or 22875, unless both of the following apply:

(1) The former employer has paid or agreed to pay the state the amount actuarially determined to equal the cost for any employee health benefits that were vested at the time that the function and the related personnel were assumed by the state.

(2) The Department of Finance finds that the contract contains a benefit factor sufficient to reimburse the state for the amount necessary to fully compensate for the postretirement health benefit costs of those personnel.

(b) For noncontracting public agencies, the state agency that has assumed the function shall certify the completed years of public agency service to be credited to the employee as state service credit under Section 22874 or 22875.

22876. (a) For the purpose of meeting the vesting requirements of Section 22873, employees of the County of Merced who became employees of the state as a result of the state's assuming firefighting functions for that county shall be credited with state service for each completed year of service with the county that would have been credited by the county for the vesting of postretirement health benefits. The definition of "state service" does not apply to employees of the County of Merced who became employees of the state as a result of the state assuming firefighting functions for the county on or before August 1, 1988.

(b) Notwithstanding subdivisions (e) and (f) of Section 22875, for the purposes of meeting the vesting requirements of Section 22873, 22874, or 22875, employees of the Cities of Rubidoux and Coachella who become employees of the state, on or before December 31, 1990, as a result of the state's assuming firefighting functions for the city, shall be credited with state service for each completed year of service with the city. The city shall identify those employees and provide the corresponding service credit information to the board.

(c) No employee whose firefighting function was transferred to the state after December 31, 1990, shall receive credit toward postretirement health benefits vesting unless the former employer agrees to reimburse the state for the costs of that credit in accordance with Section 22875.5.

22877. (a) As used in this section, the following definitions shall apply:

(1) ''Coinsurance'' means the provision of a health benefit plan design that requires the health benefit plan and state employee or annuitant to share the cost of hospital or medical expenses at a specified ratio.

(2) ''Deductible'' means the annual amount of out-of-pocket medical expenses that a state employee or annuitant must pay before the health benefit plan begins paying for expenses.

(3) ''Program'' means the Rural Health Care Equity Program.

(4) ''Rural area'' means an area in which there is no board-approved health maintenance organization plan available for enrollment by state employees or annuitants residing in the area.

(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 expenses paid by employees and annuitants living in rural areas that would otherwise be covered if the state employee or annuitant was enrolled in a board-approved health maintenance organization plan. The program shall be administered by the Department of Personnel Administration or by a third-party administrator approved by the Department of Personnel Administration 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 time that premiums for health maintenance organization plans are approved.

(2) Separate accounts shall be maintained within the program for all of the following:

(A) Employees, as defined in subdivision (c) of Section 3513.

(B) Excluded employees, as defined in subdivision (b) of Section 3527.

(C) State annuitants.

(c) Moneys in the program shall be allocated to the respective accounts as follows:

(1) The contribution provided by the state with respect to each employee, as defined in subdivision (c) of Section 3513, who lives in a rural area and is otherwise eligible, shall be an amount determined through the collective bargaining process.

(2) The contribution provided by the state with respect to each excluded employee, as defined in subdivision (b) of Section 3527, who lives in a rural area and is otherwise eligible, shall be an amount equal to, but not to exceed, the amount contributed pursuant to paragraph (1).

(3) The contribution provided by the state with respect to each state annuitant who lives in a rural area, is not a Medicare participant, resides in California, and is otherwise eligible, shall be an amount not to exceed five hundred dollars ($500) per year.

(4) The contribution provided by the state with respect to each state annuitant who lives in a rural area, resides in California, participates in a supplement Medicare health benefit plan, and is otherwise eligible, shall be an amount equal to the Medicare Part B premiums incurred by the annuitant, not to exceed seventy-five dollars ($75) per month. The program may not reimburse for penalty amounts.

(5) If an employee enters or leaves service with the state 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 during a 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 list of active state employees who participated in the program during the previous fiscal year to each employing department.

(2) On or before January 15 of each year, each department that employed an active state employee identified by the Department of Personnel Administration as a participant in the program shall provide the Department of Personnel Administration with a list of the funds used to pay each employee's salary, along with the proportion of each employee's salary attributable to each fund.

(3) Using the information provided by the employing departments, the Department of Personnel Administration shall compile a list of 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 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 contribution provided by the state in accordance with the provisions of Article 2 (commencing with Section 11270) of Chapter 3 of Part 1 of

Division 3. On or before July 31 of each year, the Department of Personnel Administration shall provide the Department of Finance with the total costs allocated for annuitants in the previous fiscal year. The reported costs may 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 program shall be disbursed for the benefit of eligible employees. The disbursements shall 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 reimburse the employee for a portion or all of his or her incurred deductible, coinsurance, and other out-of-pocket health-related expenses that would otherwise be covered if the employee and his or her family members were enrolled in a board-approved health maintenance organization plan. These subsidies and reimbursements shall be provided as determined by the Department of Personnel Administration, 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 program shall be disbursed for the benefit of eligible annuitants. The disbursements shall either reimburse the annuitant, if not a Medicare participant, for some or all of the deductible incurred by the annuitant or a family member, not to exceed five hundred dollars ($500) per fiscal year, or reimburse the annuitant, if a Medicare participant, for Medicare Part B premiums incurred by the annuitant, not to exceed seventy-five dollars ($75) per month. The program may not reimburse for penalty amounts. These reimbursements shall be provided by the Department of Personnel Administration. 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.

(h) Moneys remaining in an 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 a program account upon termination, after payment of all 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 program is established for the exclusive benefit of employees, annuitants, and family members.

(j) This section shall cease to be operative on January 1, 2005, or on an earlier date if the board makes a formal determination that health

maintenance organization plans are no longer the most cost-effective health benefit plans offered by the board.

22878. A health benefit plan offered by the California Association of Highway Patrolmen may rebate funds to participants enrolled in the basic and Medicare health benefit plans sponsored by the association, in order to ensure that participant out-of-pocket costs remain at a reasonable and competitive level as determined by the Board of Trustees of the California Association of Highway Patrolmen Health Benefits Trust. The payments shall be made from the special reserves of the health benefits trust fund. The amount of funds shall be limited to the portion of special reserves for that health benefit plan that is in excess of the amount necessary to fund the risk up to the reinsurance attachment level. Administrative costs incurred by the state for the implementation of this section shall be reimbursed by the health benefits trust from the same funds.

22879. (a) The board shall pay monthly to an employee or annuitant who is enrolled in, or whose family member is enrolled in, a Medicare health benefit plan under this part the amount of the Medicare Part B premiums, exclusive of penalties, except as provided in Section 22831. This payment may not exceed the difference between the maximum employer contribution and the amount contributed by the employer toward the cost of premiums for the health benefit plan in which the employee or annuitant and his or her family members are enrolled. No payment may be made in any month if the difference is less than one dollar ($1).

(b) This section shall be applicable only to state employees, annuitants who retired while state employees, and the family members of those persons.

(c) With respect to an annuitant, the board shall pay to the annuitant the amount required by this section from the same source from which his or her allowance is paid. Those amounts are hereby appropriated monthly from the General Fund to reimburse the board for those payments.

(d) There is hereby appropriated from the appropriate funds the amounts required by this section to be paid to active state employees.

22880. The contributions of each employee and annuitant shall be withheld from the monthly salary or retirement allowance payable to him or her.

The employer contribution required of the state, as provided by Sections 22881 and 22883, for any month shall be charged to the same fund used for payment of salaries and wages from which the employee contribution is deducted.

The employer contribution required of the state on account of each annuitant shall be payable from the funds appropriated for that purpose.

22881. From the General Fund in the State Treasury, there is hereby appropriated monthly the employer contribution required of the state under Sections 22820, 22834, 22870, 22871, and 22885 for:

(a) All employees whose compensation is paid from the General Fund.

(b) All employees whose compensation is paid from funds of, or funds appropriated to, the California State University.

(c) All employees who are employed by the Department of Education or the Department of Rehabilitation and whose compensation is paid from the Vocational Education Federal Fund, the Vocational Rehabilitation Federal Fund, or any other fund received, in whole or in part, as a donation to the state under restrictions preventing its use for such contributions.

(d) All employees whose compensation is paid from the Senate Contingent Fund, Assembly Contingent Fund, or the Contingent Fund of the Assembly and Senate.

(e) All annuitants.

22883. (a) Each fund in the State Treasury, other than the General Fund, shall be charged a fair share of the employer contribution for annuitants in accordance with the provisions of Article 2 (commencing with Section 11270) of Chapter 3 of Part 1 of Division 3.

(b) From each fund in the State Treasury, other than the General Fund, there is hereby appropriated monthly the employer contribution required under Sections 22870, 22871, and 22885 for all employees whose compensation is paid from that fund.

22885. (a) The state shall, in addition to the contributions required by Section 22870, contribute additional amounts necessary to provide funds for the administration of this part and for the establishment and continuation of the Public Employees' Contingency Reserve Fund.

(b) The additional contributions shall be in amounts reasonably adequate to pay the administrative expenses and to establish and maintain the account within the Public Employees' Contingency Reserve Fund provided by subdivision (b) of Section 22910, as determined by the board and as adopted by the Legislature in an appropriate control section of the annual Budget Act, but may not exceed, for each employee or annuitant, the following amounts:

(1) For administrative expenses, 2 percent of the total of the contributions made by the employee or annuitant and by the state on behalf of the employee or annuitant for enrollment in a health benefit plan.

(2) For the account within the Public Employees' Contingency Reserve Fund provided by subdivision (b) of Section 22910, 4 percent of the total of the contributions made by the employee or annuitant and

by the state on behalf of the employee or annuitant for enrollment in a health benefit plan.

22887. An employer may require an employee or annuitant or his or her domestic partner to be financially responsible for any increased cost of covering the domestic partner that exceeds the employer contribution rate that otherwise would have been paid.

22887.5. Notwithstanding any other provision of law, this part may not be construed to extend any vested rights to a domestic partner of an employee or annuitant, or be construed to limit the right of the Legislature to subsequently modify or repeal any provision of this part.

22889. Any person or entity subject to the requirements of this chapter shall comply with the standards set forth in Chapter 7 (commencing with Section 3750) of Part 1 of Division 9 of the Family Code and Section 14124.94 of the Welfare and Institutions Code.

Article 8. Contracting Agency Contributions

22890. (a) The contracting agency and each employee or annuitant shall contribute a portion of the cost of providing the benefit coverage afforded under the health benefit plan approved or maintained by the board in which the employee or annuitant may be enrolled.

(b) An annuitant is entitled to only one employer contribution. If more than one annuitant is receiving an allowance as the survivor of the same employee or annuitant, there shall be only one employer contribution with respect to all such annuitants.

(c) The contribution of each employee and annuitant shall be the total cost per month of the benefit coverage afforded him or her under the health benefit plan or plans in which he or she is enrolled less the portion thereof to be contributed by the employer. The employer contribution for each employee and annuitant shall commence on the effective date of enrollment.

22892. (a) The employer contribution of a contracting agency shall begin on the effective date of enrollment and shall be the amount fixed from time to time by resolution of the governing body of the agency. The resolution shall be filed with the board and the contribution amount shall be effective on the first day of the second month following the month in which the resolution is received by the system.

(b) (1) The employer contribution shall be an equal amount for both employees and annuitants, but may not be less than the following:

(A) Prior to January 1, 2004, sixteen dollars ($16) per month.

(B) During calendar year 2004, thirty-two dollars and twenty cents ($32.20) per month.

(C) During calendar year 2005, forty-eight dollars and forty cents ($48.40) per month.

(D) During calendar year 2006, sixty-four dollars and sixty cents ($64.60) per month.

(E) During calendar year 2007, eighty dollars and eighty cents ($80.80) per month.

(F) During calendar year 2008, ninety-seven dollars ($97) per month.

(2) Commencing January 1, 2009, the employer contribution shall be adjusted annually by the board to reflect any change in the medical care component of the Consumer Price Index and shall be rounded to the nearest dollar. A school employer shall contribute the amount it contributed to a health benefit plan for its employees at the time of its election to participate or the amount otherwise specified in this subdivision, whichever is greater.

(c) A contracting agency may, notwithstanding the equal contribution requirement of subdivision (b), establish a lesser monthly employer contribution for annuitants than for employees, provided that the monthly contribution for annuitants is annually increased by an amount not less than 5 percent of the monthly employer contribution for employees, until the time that the employer contribution for annuitants equals the employer contribution paid for employees. This subdivision shall only apply to agencies that first become subject to this part on or after January 1, 1986.

22893. (a) Notwithstanding Section 22892, the percentage of employer contribution payable for postretirement health benefits for an employee of a contracting agency subject to this section shall, except as provided in subdivision (b), be based on the member's completed years of credited state service at retirement as shown in the following table:

Credited Years of Service	Percentage of Employer Contribution
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20 or more	100

This subdivision shall apply only to employees who retire for service and are first employed after this section becomes applicable to their

employer, except as otherwise provided in paragraph (6). The application of this subdivision shall be subject to the following provisions:

(1) The employer contribution with respect to each annuitant shall be adjusted by the employer each year. Those adjustments shall be based upon the principle that the employer contribution for each annuitant may not be less than the amount equal to 100 percent of the weighted average of the health benefit plan premiums for an employee or annuitant enrolled for self-alone, during the benefit year to which the formula is applied, for the four health benefit plans that had the largest state enrollment, excluding family members, during the previous benefit year. For each annuitant with enrolled family members, the employer shall contribute an additional 90 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four health benefit plans that had the largest state enrollment, excluding family members, during the previous benefit year. Only the enrollment of, and premiums paid by, state employees and annuitants enrolled in basic health benefit plans shall be counted for purposes of calculating the employer contribution under this section.

(2) The employer shall have, in the case of employees represented by a bargaining unit, reached an agreement with that bargaining unit to be subject to this section.

(3) The employer shall certify to the board, in the case of employees not represented by a bargaining unit, that there is not an applicable memorandum of understanding.

(4) The credited service of an employee for the purpose of determining the percentage of employer contributions applicable under this section shall mean state service as defined in Section 20069, except that at least five years of service shall have been performed entirely with that employer.

(5) The employer shall provide the board any information requested that the board determines is necessary to implement this section.

(6) The employer may, once each year without discrimination, allow all employees who were first employed before this section became applicable to the employer to individually elect to be subject to the provisions of this section, and the employer shall notify the board which employees have made that election.

(b) Notwithstanding subdivision (a), the contribution payable by an employer subject to this section shall be equal to 100 percent of the amount established pursuant to paragraph (1) of subdivision (a) on behalf of any annuitant who either:

(1) Retired for disability.

(2) Retired for service with 20 or more years of service credit entirely with that employer, regardless of the number of days after separation from employment. The contribution payable by an employer under this paragraph shall be paid only if it is greater than, and made in lieu of, a contribution payable to the annuitant by another employer under this part. The board shall establish application procedures and eligibility criteria to implement this paragraph.

(c) This section does not apply to any contracting agency, its employees, or annuitants unless and until the agency files with the board a resolution of its governing body electing to be so subject. The resolution shall be adopted by a majority vote of the governing body and shall be effective at the time provided in board regulations.

22895. (a) Notwithstanding any other provision of this part, a school employer, the employees' exclusive representative, and unrepresented employees may agree that the employer contribution for postretirement health coverage shall be subject to the following:

(1) Credited years of service that the employee worked with the contracting agency.

(2) A memorandum of understanding regarding postretirement health coverage mutually agreed upon through collective bargaining. This issue may not be subject to the impasse procedures set forth in Article 9 (commencing with Section 3548) of Chapter 10.7 of Division 4 of Title 1.

(b) No agreement reached pursuant to subdivision (a) shall be valid if it imposes separate postretirement health coverage vesting requirements on employees in the same category and doing similar job duties.

(c) This section is not applicable to any employee who retired before the effective date of the memorandum of understanding. In the event that the memorandum of understanding establishes a retroactive effective date, this section applies only prospectively and any employee who retires before the memorandum of understanding is signed may not be affected by it.

(d) No agreement reached pursuant to subdivision (a) shall be valid if it provides an employer contribution for employees with less than five years of credited service with the school employer.

(e) The contracting agency shall provide, in the manner prescribed by the board, a notification of the agreement established pursuant to this section and any additional information necessary to implement this section.

22897. (a) Notwithstanding any other provision of this part, a contracting agency and the employees' exclusive representative may agree that the employer contribution for postretirement health benefit coverage for an employee subject to this section shall be based on the

employee's completed years of service credited with the contracting agency at retirement, with the contracting agency paying no employer contribution for the first 15 years of that credited service and paying 100 percent of the employer contribution for employees with credited service of 15 years or more.

This section applies only to the North Orange County Community College District and the Riverside County Superintendent of Schools, only with regard to the employees of those agencies who are first hired on or after July 1, 1993.

(b) An agreement entered into pursuant to subdivision (a) shall provide that the employer contribution for a part-time employee, with 20 years or more of credited service with the contracting agency, shall be 100 percent of the employer contribution.

22899. (a) The contributions required of a contracting agency, along with contributions withheld from salaries of its employees, shall be forwarded monthly, no later than the 10th day of the month for which the contribution is due. The contributions shall be credited to the Public Employees' Contingency Reserve Fund as specified by Section 22910.

(b) A county superintendent of schools shall draw requisitions against the county school service fund and the funds of the respective school districts for the amount equal to the total of the employer contributions and the employee contributions deducted from compensation paid from those funds. The amounts shall be deposited in the county treasury to the credit of the contract retirement fund established pursuant to Section 20617. The county superintendent thereafter shall draw his or her requisitions against the fund in favor of the board which, when allowed by the county auditor, shall constitute warrants against the fund and shall forward the warrants to the board in accordance with this section.

(c) If a contracting agency fails to remit the contributions when due, the agency may be assessed interest at an annual rate of 10 percent and the costs of collection, including reasonable legal fees, when necessary to collect the amounts due. In the case of repeated delinquencies, the contracting agency may be assessed a penalty of 10 percent of the delinquent amount. That penalty may be assessed once during each 30-day period that the amount remains unpaid. Additionally, the contracting agency may be required to deposit one-month's premium as a condition of continued participation in the program.

22901. Each contracting agency shall contribute to the Public Employees' Contingency Reserve Fund, an amount sufficient to bear all of the administrative costs incurred by the board in providing to the employees and annuitants of that agency the health benefits provided by this part. The amount of the contributions required by this section shall be determined by the board and may include an appropriate share of

overhead costs of the program. A contracting agency shall, in addition, contribute to the fund for each of its employees and annuitants the same amount as is required of the state under paragraph (2) of subdivision (b) of Section 22885.

22903. An employer may require an employee or annuitant or his or her domestic partner to be financially responsible for any increased cost of covering the domestic partner that exceeds the employer contribution rate that otherwise would have been paid.

22903.5. Notwithstanding any other provision of law, this part may not be construed to extend any vested rights to a domestic partner of an employee or annuitant, or be construed to limit the right of the Legislature to subsequently modify or repeal any provision of this part.

22905. Any person or entity subject to the requirements of this chapter shall comply with the standards set forth in Chapter 7 (commencing with Section 3750) of Part 1 of Division 9 of the Family Code and Section 14124.94 of the Welfare and Institutions Code.

Article 9. Maintenance of Funds

22910. (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 benefit 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 22885 or 22901 to provide an adequate contingency reserve. The income derived from any dividends, rate adjustments, or other funds received from a health benefit 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 employers, to implement cost containment programs, or to increase the benefits provided by a health benefit plan, as determined by the board. The board may use penalties and interest deposited pursuant to subdivision (c) of Section 22899 to pay any difference between the adjusted rate set by the board pursuant to Section 22864 and the applicable health benefit plan contract rates.

(2) The total credited to the account for health benefit 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 and regulations adopted pursuant to Section 22831 to minimize the impact of adverse selection or contracts entered into pursuant to Section 22864 to implement health benefit 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 22913 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 benefit 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 22885 and 22901.

(2) The moneys deposited pursuant to Sections 22885 and 22901 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 (f) of Section 22850. Notwithstanding Section 13340, the 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 22899 shall be deposited in the account pursuant to paragraph (1) of subdivision (b).

(e) Accounts shall be maintained in the Public Employees' Contingency Reserve Fund for complementary annuitant premiums and related administrative expenses paid by annuitants pursuant to Section 22802. Notwithstanding Section 13340, the funds are continuously appropriated, without regard to fiscal year, to reimburse the Public Employees' Retirement Fund for payment of annuitant health premiums, and for the payment of premiums and other charges to

carriers or to the Public Employees' Health Care Fund. Administrative expenses deposited in this account shall be credited to the account provided by subdivision (c).

22911. (a) There shall be maintained in the State Treasury the Public Employees' Health Care Fund to fund the health benefit plans administered or approved by the board. The board may invest funds in the Public Employees' Health Care Fund in accordance with the provisions of law governing its investment of the retirement fund.

(b) The Public Employees' Health Care Fund shall consist of the following:

(1) Any self-funded or minimum premium plan premiums paid by contracting agencies, the state and enrolled employees, annuitants, and family members, including premiums paid directly for continuation coverage authorized under the Consolidated Omnibus Budget Reconciliation Act, and as authorized by this part.

(2) Any reserve moneys from terminated health benefit plans designated by the board.

(c) Income earned on the Public Employees' Health Care Fund shall be credited to the fund.

(d) Notwithstanding Section 13340, the Public Employees' Health Care Fund is continuously appropriated, without regard to fiscal years, to pay benefits and claims costs, the costs of administering self-funded or minimum premium health benefit plans, refunds to those who made direct premium payments, and other costs as the board may determine necessary, consistent with its fiduciary duty.

(e) The Legislature finds and declares that the Public Employees' Health Care Fund is a trust fund held for the exclusive benefit of enrolled employees, annuitants, family members, the self-funded plan administrator, and those contracting to provide medical and hospital care services.

22913. (a) Contributions of employees, annuitants, and employers not credited to the Public Employees' Contingency Reserve Fund for purposes specified in Section 22885 or 22901 shall be utilized to pay the premiums or other charges to carriers or to the Public Employees' Health Care Fund.

(b) The Controller shall suitably identify and remit the state's contribution for each employee or annuitant monthly to the Public Employees' Health Care Fund or to the carriers, together with amounts authorized by the employees and annuitants to be deducted from their salaries or retirement allowances for payment of the employee contribution.

(c) The contributions of employees and annuitants of contracting agencies and the contributions of contracting agency employers shall be

suitably identified and remitted monthly to the carriers by warrant of the Controller upon claims filed by the board.

22915. There is in the State Treasury the State Annuitants' Vision Care Benefits Fund that is, upon appropriation by the Legislature, available to the board for expenditure solely for the provision of vision care benefits to state annuitants pursuant to this part.

Article 10. Contracting with Public Agencies

22920. The following entities are eligible to become subject to this part:

(a) A contracting agency, as defined in Section 20022, a county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and a school employer.

(b) A public body or agency of or within the state that is not subject to Part 3 (commencing with Section 20000) of the Government Code or the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and that provides a retirement system for its employees funded wholly or in part by public funds.

(c) The protection and advocacy agency described in subdivision (h) of Section 4900 of the Welfare and Institutions Code, if the agency obtains a written advisory opinion from the United States Department of Labor stating that the organization is an agency or instrumentality of the state or a political subdivision thereof within the meaning of Chapter 18 (commencing with Section 1001) of Title 29 of the United States Code.

22922. (a) A contracting agency and its employees and annuitants shall be subject to this part upon filing with the board a resolution of its governing body electing to be so subject. The resolution shall be adopted by a majority vote and shall be effective at the time provided in board regulations.

(b) A contracting agency may become subject to this part with respect to a recognized employee organization. The resolution filed with respect to a contracting agency pursuant to subdivision (a) shall specify the recognized employee organizations to which the resolution applies.

(c) Pursuant to Section 22796 and subdivision (g) of Section 22934, 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 22938.

22927. Notwithstanding any other provision of this part, a contracting agency that is a city and county shall be subject to this part only with respect to employees who upon entering city and county employment from state employment had an option under state statutes to continue enrollment under this part.

22928. When a hospital becomes a contracting agency pursuant to subdivision (p) of Section 20057, its employees shall be deemed city employees for purposes of this part until the hospital enacts its own resolution or acts officially to terminate its participation under this part.

22929. (a) A contracting agency may, at its option, offer health benefits pursuant to this part, to the domestic partners of its employees and annuitants.

(b) The contracting agency shall notify the board, in the manner prescribed, that it is electing to provide health coverage through this part to the domestic partners of its employees and annuitants.

(c) The contracting agency shall provide any information deemed necessary by the board to determine eligibility under this part.

22930. If the board administers a specialized health benefit plan, it may offer coverage in the specialized health benefit plan to a contracting agency that also provides coverage for its employees in a health benefit plan under this part.

22931. Annuitants that receive benefits under this part and are former certificated employees that retired from a school employer, including the spouses and surviving spouses, are not subject to Article 1 (commencing with Section 7000) of Chapter 1 of Part 5 of Division 1 of the Education Code. The school employer is also not subject to Article 1 (commencing with Section 7000) of Chapter 1 of Part 5 of Division 1 of the Education Code with respect to those annuitants.

22932. A contracting agency shall perform the functions necessary to enroll its employees and submit reports as may be required by the board. A county superintendent of schools shall have the responsibility of providing all information concerning the school districts within his or her jurisdiction to the board.

22934. (a) A contracting agency that has elected to be subject to this part may not maintain any other health benefit plan or program offering hospital and medical care for its employees.

(b) Notwithstanding subdivision (a), a plan operating on July 1, 2002, shall be permitted to continue as long as it meets the requirements of subdivision (e). A material change in the plan, including a change in carriers, shall be permitted. Notwithstanding any other provision of this part, a contracting agency may include a dependent of an employee or retiree who is not eligible for coverage as a family member or a domestic partner, as provided in this part, if the employee or retiree is also enrolled in the alternative plan.

(c) Notwithstanding subdivision (a), a self-insured plan operating on January 1, 2003, shall be permitted to continue as long as it meets the requirements of subdivision (e). The board may extend the deadline contained in this subdivision for good cause.

(d) Notwithstanding subdivision (a), an alternative plan established by a contracting agency and approved by the board after July 1, 2002, shall be permitted to continue until December 31, 2004. The plan may only be offered in an area in which there is no board-approved health maintenance organization or exclusive provider organization plan available for enrollment, or there is only one board-approved health maintenance organization plan available for enrollment, and that plan has less than 55 percent of the primary care physicians in its provider network available for new patients. The contracting agency shall reimburse the board for reasonable administrative expenses incurred as a result of enrollment activities outside of the system's open enrollment period caused by the creation or termination of a plan offered pursuant to this subdivision. A contracting agency providing a plan pursuant to this subdivision shall notify the board by June 1, 2004, of its intent to either terminate that plan or to terminate its participation under this part as of January 1, 2005. On or after June 1, 2004, the board may extend the termination date contained in this subdivision for a contracting agency at its discretion, based on compelling circumstances in the region in which the contracting agency is located.

(e) A plan maintained pursuant to this section shall meet and maintain the minimum standards for approved health benefit plans prescribed by the board pursuant to the requirements of this part.

(f) An election of a contracting agency to be subject to this part is not effective prior to the termination of any health benefit plan maintained in violation of this section. The establishment of any plan thereafter in violation of this section shall terminate participation of the agency and all of its employees under this part as of the end of the contract year.

(g) Nothing in this part may be construed to prohibit a contracting agency from offering health plans, including collectively bargained union health and welfare trust plans, to employees and annuitants of employee groups, including collective bargaining units, if the contracting agency has not elected to provide coverage for that group under this part.

22937. A contracting agency may elect, by amending its contract with the board, to participate in a Medicare reimbursement program for its employees, annuitants, or family members who are enrolled in a Medicare health benefit plan under this part, as prescribed by board regulations.

22938. A contracting agency that has elected to be subject to this part may elect to cease to be so subject by resolution adopted by a

majority vote of its governing body and filed with the board on or before the deadline provided in board regulations, to be effective at the end of the current contract year. Coverage of employees and annuitants of the contracting agency shall also terminate at the end of the current contract year.

22939. The board may terminate the participation of a contracting agency if it fails for three months after a demand to perform any act required by this part or by board rules or regulations.

Article 11. Prefunding Plan for Health Care Coverage for Annuitants

22940. There is in the State Treasury the Annuitants' Health Care Coverage Fund that is a trust fund and a retirement fund, within the meaning of Section 17 of Article XVI of the California Constitution, that is continuously appropriated without regard to fiscal years to the board for expenditure for the prefunding of health care coverage for annuitants pursuant to this part, including administrative costs. The board has sole and exclusive control and power over the administration and investment of the Annuitants' Health Care Coverage Fund and shall make investments pursuant to Part 3 (commencing with Section 20000).

22942. An employer may elect to participate in the prefunding plan established by this article.

22944. The board shall annually determine the rate of contribution for the following fiscal year for each employer providing benefits pursuant to this part, regardless of whether the employer participates pursuant to this article, and shall annually transmit to each employer its contribution rate for the following fiscal year which would fully fund its obligation under this article.

CHAPTER 2. RECOVERY OF MEDICAL COSTS

22945. (a) The purpose of this chapter is to establish the rights of the California Association of Highway Patrolmen Health Benefits Trust, the Peace Officers Research Association of California Health Benefits Trust, and the California Correctional Peace Officer Association Health Benefits Trust to recover medical costs paid to a participant for injuries, including injuries that result in death, caused by or allegedly caused by a third party.

(b) This chapter does not apply if the participant is injured in the course and scope of his or her employment. In those cases, Chapter 5 (commencing with Section 3850) of Part 1 of Division 4 of the Labor Code governs.

22946. As used in this chapter:

(a) ''Health benefits trust'' means the California Association of Highway Patrolmen Health Benefits Trust, the Peace Officers Research Association of California Health Benefits Trust, the California Correctional Peace Officers Association Health Benefits Trust, or a self-funded plan administered by the board under this part.

(b) ''Participant'' means an employee, annuitant, or family member who is a member of a health benefits trust and who is injured by, or due to the actions or inactions of, a third person, and includes any other person to whom a claim accrues by reason of the injury or death of the employee, annuitant, or family member.

(c) ''Third party'' means any tortfeasor or alleged tortfeasor against whom the participant asserts a claim for injury or death.

22947. (a) A health benefits trust may assert a lien for health benefits paid on behalf of a participant against any settlement with, or arbitration award or judgment against, a third party. No lien asserted by a health benefits trust under this section may exceed the amount actually paid by the trust to any treating medical provider.

(b) The participant, if not represented by an attorney, or the participant's attorney, shall immediately send, by certified mail, written notice of the existence of any claim or action against a third party, to the following:

(1) The health benefits trust.

(2) A hospital or any hospital-affiliated health facility, as defined in Section 1250 of the Health and Safety Code, that is known to have provided health care services to the participant.

(c) If medical costs are paid by the health benefits trust, contract providers may not assert an independent lien against the participant. Contract providers who agree, by contract, to a specified rate may not seek to recover an amount that exceeds the contracted rate against the participant.

This subdivision is not applicable to a lien for hospital services pursuant to Chapter 4 (commencing with Section 3045.1) of Title 14 of Part 4 of Division 3 of the Civil Code.

(d) If the participant engaged an attorney, the lien for health services asserted by a health benefits trust under subdivision (a) may not exceed the lesser of the actual amount paid by the trust or one-third of the moneys due to the participant under any final judgment, compromise, arbitration, or settlement agreement.

(e) If the participant did not engage an attorney, the lien for health services asserted by the health benefits trust under subdivision (a) may not exceed the lesser of the actual amount paid by the trust or one-half of the moneys due to the participant under any final judgment, compromise, arbitration, or settlement agreement.

(f) If a final judgment includes a special finding by a judge, jury, or arbitrator that the participant was partially at fault, the lien asserted by the health benefits trust shall be reduced by the same comparative fault percentage by which the participant's recovery was reduced.

(g) The lien asserted by the health benefits trust shall be subject to pro rata reduction, commensurate with the participant's reasonable attorney's fees and costs, in accordance with the common fund doctrine.

(h) The court or arbitrator may also take into account the obligation, if any, of the health benefits trust to make future medical payments on behalf of the participant for the medical condition that gave rise to the claim against the third party.

(i) The provisions of this section may not be admitted into evidence nor given in any instruction in any civil action or proceeding between a participant and a third party.

22948. (a) A court or arbitrator having jurisdiction over a claim by a participant against a third party shall additionally have jurisdiction over apportionment of any recovery on the claim, if the participant and the health benefits trust or any other party asserting a lien cannot agree on an allocation.

(b) In the event of a settlement between the participant and the third party where there is no agreement on proper apportionment of the settlement between the participant and the health benefits trust or any other party asserting a lien, the participant may petition the court for a determination in accordance with this section. The parties may introduce evidence with respect to the issue of apportionment in any manner authorized by the Evidence Code, including, but not limited to, introduction by sworn declaration or by relevant discovery responses. The participant shall make available to the health benefits trust all relevant discovery in a reasonable and timely manner. The use of witness testimony shall be discouraged and shall be allowed only by stipulation of the parties.

(c) In the event of a judgment where there is no agreement on proper apportionment of the judgment between the participant and the health benefits trust or any other party asserting a lien, the participant may file a post-trial motion asking the court to apportion the judgment in accordance with this section.

SEC. 23. Part 5 (commencing with Section 22751) of Division 5 of Title 2 of the Government Code is repealed.

SEC. 24. Part 6 (commencing with Section 22950) of Division 5 of Title 2 of the Government Code is repealed.

SEC. 25. Part 6 (commencing with Section 22950) is added to Division 5 of Title 2 of the Government Code, to read:

PART 6. STATE EMPLOYEES' DENTAL CARE ACT

22950. This part may be cited as the State Employees' Dental Care Act.

22951. It is the purpose of this part to do all of the following:

(a) Promote increased economy and efficiency in the state service.

(b) Enable the state to attract and retain qualified employees by providing dental care plans similar to those commonly provided in private industry.

(c) Recognize and protect the state's investment in each permanent employee by promoting and preserving good health among state employees.

22952. Unless otherwise indicated, the definition of terms in Part 5 (commencing with Section 22750) apply to this part.

22953. (a) The state, through the Department of Personnel Administration, the Trustees of the California State University, or the Regents of the University of California may contract, upon negotiations with employee organizations, with carriers for dental care plans for employees, annuitants, and eligible family members, provided the carriers have operated successfully in the area of dental care benefits for a reasonable period or have a contract to provide a health benefit plan pursuant to Section 22850. The dental care plans may include a portion of the monthly premium to be paid by the employee or annuitant. Dental care plans provided under this authority may be self-funded by the employer if it is determined to be cost-effective.

(b) An employee or annuitant may enroll in a dental care plan provided by a carrier that also provides a health benefit plan pursuant to Section 22850 if the employee or annuitant is also enrolled in the health benefit plan provided by that carrier. However, nothing in this section may be construed to require an employee or annuitant to enroll in a dental care plan and a health benefit plan provided by the same carrier.

(c) No contract for a dental care plan may be entered into unless funds are appropriated by the Legislature in a subsequently enacted statute. If a dental care plan is self-funded, funds used for that plan shall be considered continuously appropriated, notwithstanding Section 13340.

22954. Funds appropriated for self-funded dental care plans for state employees, other than employees of the California State University, shall be maintained in the State Employees' Dental Care Fund which is hereby created in the State Treasury. Moneys in this fund shall be used by the Department of Personnel Administration to pay dental claims and other administrative costs. Income earned on the moneys in the State Employees' Dental Care Fund shall be credited to the fund. Moneys in this fund are continuously appropriated in accordance with this section and Section 22953.

22955. Funds appropriated for self-funded dental care plans for employees of the California State University shall be maintained in the California State University Employees' Dental Care Fund, which is hereby created in the State Treasury. Moneys in this fund shall be used by the Trustees of the California State University to pay dental claims and other administrative costs. Income earned on the moneys in the California State University Employees' Dental Care Fund shall be credited to the fund. Moneys in this fund are continuously appropriated in accordance with this section and Section 22953.

22956. (a) An annuitant who retires from the state may enroll in a dental care plan offered under this part, provided either of the following apply:

(1) The annuitant is not enrolled in a health benefit plan or a dental care plan, but was eligible for enrollment as an employee at the time of separation for retirement, and who retired within 120 days of the date of separation.

(2) The annuitant is receiving an allowance pursuant to Article 6 (commencing with Section 9359) of Chapter 3.5 of Part 1 of Division 2.

(b) The board has no duty to locate or notify any annuitant who may be eligible to enroll, or to provide names or addresses to any person, agency, or entity for the purpose of notifying those annuitants.

22957. A person who was enrolled in a dental care plan at the time he or she became an annuitant under state or federal provisions, may continue his or her enrollment, including eligible family members, without discrimination as to premium rates or benefit coverage. The dental care plans may require part of a monthly premium to be paid by the annuitant, not to exceed the premium paid by represented or excluded employees, whichever is less, for the state-sponsored indemnity dental plan. The premium to be paid by the annuitant shall be deducted from his or her monthly allowance.

22958. (a) Notwithstanding Sections 22953 and 22957, the following employees may not receive any portion of the employer contribution payable for annuitants, unless the person is credited with 10 or more years of state service, as defined by this section, at the time of retirement:

(1) A state employee, as defined by subdivision (c) of Section 3513, in State Bargaining Unit 5, 6, 8, or 16 who becomes a state member of the system after January 1, 1999.

(2) A state employee, as defined by subdivision (c) of Section 3513, in State Bargaining Unit 19 who becomes a state member of the system after July 1, 1998.

(3) A state employee, as defined by subdivision (c) of Section 3513, who becomes a state member of the system after January 1, 2000, and is a member of a state bargaining unit that has agreed to this section.

(4) A state employee who becomes a state member of the system after January 1, 2000, and is either excluded from the definition of a state employee in subdivision (c) of Section 3513, or a nonelected officer or employee of the executive branch of government who is not a member of the civil service.

(b) The percentage of the employer contribution payable for postretirement dental care benefits for an employee subject to this section shall be based on the funding provision of the plan and the completed years of credited state service at retirement as shown in the following table:

Credited Years of Service	Percentage of Employer Contribution
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20 or more	100

(c) This section only applies to state employees who retire for service.

(d) Benefits provided to an employee subject to this section shall be applicable to all future state service.

(e) For purposes of this section, ''state service'' means service rendered as an employee or an appointed or elected officer of the state for compensation.

(f) In those cases where the state has assumed from a public agency a function and the related personnel, service rendered by that personnel for compensation as employees or appointed or elected officers of that public agency may not be credited as state service for the purposes of this section, unless the former employer has paid or agreed to pay the state the amount actuarially determined to equal the cost for any employee dental benefits that were vested at the time that the function and the related personnel were assumed by the state, and the Department of Finance finds that the contract contains a benefit factor sufficient to

reimburse the state for the amount necessary to fully compensate for the postretirement dental benefit costs of those personnel. For noncontracting public agencies, the state agency that has assumed the function shall certify the completed years of public agency service to be credited to the employee as state service credit under this section.

(g) This section does not apply to employees of the California State University or the Legislature.

22959. The Department of Personnel Administration shall administer the benefits provided by this part for civil service employees and annuitants. The Trustees of the California State University shall administer the benefits provided by this part for employees and annuitants of the California State University.

SEC. 26. Section 26296.22 of the Government Code is amended to read:

26296.22. (a) Except as otherwise provided in subdivisions (b) and (c), the commission shall enter into a contract with the Board of Administration of the Public Employees' Retirement System, and the board shall enter into that contract, to include all of the employees of the commission in that retirement system, and the employees shall be entitled to substantially similar health benefits as are state employees pursuant to Part 5 (commencing with Section 22750) of Division 5 of Title 2.

(b) For purposes of providing retirement benefits, the commission may contract with the retirement system of which the employees of the county are members, in lieu of contracting with the board.

(c) Notwithstanding subdivision (a) or (b), to the extent that the commission contracts with the county or other agencies to utilize employees of the county or other agencies as employees of the commission, the commission need not establish any retirement benefits program for those employees.

SEC. 27. Section 26299.036 of the Government Code is amended to read:

26299.036. (a) Except as otherwise provided in subdivisions (b) and (c), the agency shall enter into a contract with the Board of Administration of the Public Employees' Retirement System, and the board shall enter into that contract, to include all of the employees of the agency in that retirement system, and the employees shall be entitled to substantially similar health benefits as are state employees pursuant to Part 5 (commencing with Section 22750) of Division 5 of Title 2.

(b) For purposes of providing retirement benefits, the agency may contract with the retirement system of which the employees of the county are members, in lieu of contracting with the board.

(c) Notwithstanding subdivision (a) or (b), to the extent that the agency contracts with the county or other agencies to utilize employees

of the county or other agencies as employees of the agency, the agency need not establish any retirement benefits program for those employees.

SEC. 28. Section 73642 of the Government Code is amended to read:

73642. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan, except that if deferred compensation is selected, no adjustment based on retirement tier shall apply, and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Title 2) that the state provides to retired superior court judges under that act.

SEC. 29. Section 73952 of the Government Code is amended to read:

73952. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan, except that if deferred compensation is selected, no adjustment based on retirement tier shall apply, and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Title 2) that the state provides to retired superior court judges under that act.

SEC. 30. Section 74342 of the Government Code is amended to read:

74342. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan, except that if deferred compensation is selected, no adjustment based on retirement tier shall apply, and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Title 2) that the state provides to retired superior court judges under that act.

SEC. 31. Section 74742 of the Government Code is amended to read:

74742. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan, except that if deferred compensation is selected, no adjustment based on retirement tier shall apply, and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in those benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Title 2) that the state provides to retired superior court judges under that act.

SEC. 32. Section 75521 of the Government Code is amended to read:

75521. (a) A judge who leaves judicial office before accruing at least five years of service shall be paid the amount of his or her contributions to the system, and no other amount.

(b) A judge who leaves judicial office after accruing five or more years of service and who is not eligible to elect to retire under Section 75522 shall be paid the amount of his or her monetary credits determined pursuant to Section 75520, including the credits added under subdivision (b) of that section computed to the last day of the month preceding the date of distribution, and no other amount.

(c) Judges who leave office as described in subdivision (b) are ''retired judges'' for purposes of a concurrent retirement with respect to the benefits provided under Section 20639 and assignment pursuant to Article 2 (commencing with Section 66540) of Chapter 2 and are eligible for benefits provided under Section 22814.

(d) After a judge has withdrawn his or her accumulated contributions or the amount of his or her monetary credits upon leaving judicial office, the service shall not count in the event he or she later becomes a judge again, until he or she pays into the Judges' Retirement System II Fund the amount withdrawn, plus interest thereon at the rate of interest then being required to be paid by members of the Public Employees' Retirement System under Section 20750 from the date of withdrawal to the date of payment.

SEC. 33. Section 124964 of the Health and Safety Code is amended to read:

124964. The standard health benefit package provided to the uninsured poor children and adults enrolled in the pilot program shall be the same as, or comparable to, the benefit packages available to the employees of those public agencies who have elected to have their employees participate in the Public Employees' Medical and Hospital Care Act, Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code.

SEC. 34. Section 4856 of the Labor Code is amended to read:

4856. (a) Whenever any local employee who is a firefighter, or peace officer as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, is killed in the performance of his or her duty or dies as a result of an accident or injury caused by external violence or physical force incurred in the performance of his or her duty, the employer shall continue providing health benefits to the deceased employee's spouse under the same terms and conditions provided prior to the death, or prior to the accident or injury that caused the death, of the employee unless the surviving spouse elects to receive a lump-sum survivors benefit in lieu of monthly benefits. Minor dependents shall continue to receive benefits under the coverage provided the surviving spouse or, if there is no surviving spouse, until

the age of 21 years. However, pursuant to Section 22822 of the Government Code, the surviving spouse may not add the new spouse or stepchildren as family members under the continued health benefits coverage of the surviving spouse.

(b) Subdivision (a) also applies to the employer of any local employee who is a firefighter, or peace officer as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who was killed in the performance of his or her duty or who died as a result of an accident or injury caused by external violence or physical force incurred in the performance of his or her duty prior to September 30, 1996.

SEC. 35. Section 13600 of the Probate Code is amended to read:

13600. (a) At any time after a husband or wife dies, the surviving spouse or the guardian or conservator of the estate of the surviving spouse may, without procuring letters of administration or awaiting probate of the will, collect salary or other compensation owed by an employer for personal services of the deceased spouse, including compensation for unused vacation, not in excess of five thousand dollars ($5,000) net.

(b) Not more than five thousand dollars ($5,000) net in the aggregate may be collected by or for the surviving spouse under this chapter from all of the employers of the decedent.

(c) For the purposes of this chapter, a guardian or conservator of the estate of the surviving spouse may act on behalf of the surviving spouse without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending.

(d) The five thousand dollar ($5,000) net limitation set forth in subdivisions (a) and (b) does not apply to the surviving spouse or the guardian or conservator of the estate of the surviving spouse of a firefighter or peace officer described in subdivision (a) of Section 22820 of the Government Code.

(e) On January 1, 2003, and on January 1 of each year thereafter, the maximum net amount of salary or compensation payable under subdivisions (a) and (b) to the surviving spouse or the guardian or conservator of the estate of the surviving spouse may be adjusted to reflect any increase in the cost of living occurring after January 1 of the immediately preceding year. The United States city average of the ''Consumer Price Index for all Urban Consumers,'' as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. The cost-of-living increase shall equal or exceed 1 percent before any adjustment is made. The net amount payable may not be decreased as a result of the cost-of-living adjustment.

SEC. 36. Section 35137 of the Public Resources Code is amended to read:

35137. The authority may enter into a contract with the Board of Administration of the Public Employees' Retirement System to include the employees of the authority in that retirement system who are eligible for membership therein, and the employees shall be entitled to the same benefits as state employees pursuant to Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code.

SEC. 37. Section 130109 of the Public Utilities Code is amended to read:

130109. (a) Except as otherwise provided in subdivision (b), the commission shall enter into a contract with the Board of Administration of the Public Employees' Retirement System, and the board shall enter into that contract, to include all of the employees of the commission into that retirement system, and the employees shall be entitled to substantially similar health benefits as are state employees pursuant to Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code.

(b) For purposes of providing retirement benefits, the commission may contract with the retirement system that the employees of the county in which the commission is located are members of in lieu of contracting with the board.

(c) Each person employed by the Orange County Transportation Commission on January 1, 1992, may, no later than February 1, 1992, elect to either remain a member of the Public Employees' Retirement System or become a member of the Orange County Employees Retirement System. All persons who become employed by the commission after February 1, 1991, shall be members of the Orange County Employees Retirement System.

SEC. 38. Section 131269 of the Public Utilities Code is amended to read:

131269. A county transportation authority may enter into a contract with the Board of Administration of the Public Employees' Retirement System, and the board may enter into the contract to include all of the employees of the county transportation authority in that retirement system. The employees may be entitled to the same health benefits as are state employees pursuant to Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code or any other retirement system that the authority determines is in the best interest of its employees.

SEC. 39. Section 140109 of the Public Utilities Code is amended to read:

140109. The authority shall enter into a contract with the Board of Administration of the Public Employees' Retirement System to include

all of the employees of the commission into that retirement system, and the employees shall be entitled to the same health benefits as are state employees pursuant to Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code.

SEC. 40. It is the intent of the Legislature in enacting this act to reorganize the Public Employees' Medical and Hospital Care Act and the State Employees' Dental Care Act. It is not the intent of the Legislature to make any substantive change in the law. Thus, if, in the opinion of any court or administrative officer, a different result under any provision of Part 5 (commencing with Section 22751) of Division 5 of Title 2 of, or Part 6 (commencing with Section 22950) of Division 5 of Title 2 of, the Government Code, as it read on December 31, 2003, would occur because of the enactment of this act, the provision as it read on the effective date of this act shall be followed and the result shall be as it would have been on that date. It is further the intent of the Legislature that no new or additional rights vest in any employee, annuitant, or family member nor any benefits be reduced or impaired as a result of the enactment of this act. No current or future benefits under this act shall be revised in any way because of this act.

SEC. 41. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to facilitate the orderly administration of public retirement systems subject to this act at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 70

An act to amend Sections 61405 and 62182 of the Food and Agricultural Code, relating to milk.

[Approved by Governor June 23, 2004. Filed with Secretary of State June 24, 2004.]

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

SECTION 1. Section 61405 of the Food and Agricultural Code is amended to read:

61405. (a) Every manufacturing milk handler that operates only one plant within the state, before purchasing any manufacturing milk from a producer, shall execute and deliver to the secretary a surety bond, executed by the applicant as principal and by a surety company qualified

and authorized to do business in this state as surety. The amount of the bond shall be based upon the average daily quantity of manufacturing milk purchased by the handler during any calendar month during a calendar year. The minimum amount of the bond shall be as follows:

(1) Five thousand dollars ($5,000) for any handler that purchases an average daily quantity of less than 1,000 gallons.

(2) Ten thousand dollars ($10,000) for any handler that purchases an average daily quantity of at least 1,000 gallons but less than 4,000 gallons.

(3) Fifteen thousand dollars ($15,000) for any handler that purchases an average daily quantity of at least 4,000 gallons but less than 8,000 gallons.

(4) Twenty thousand dollars ($20,000) for any handler that purchases an average daily quantity of 8,000 gallons or more.

(b) Every manufacturing milk handler that operates more than one plant within the state, before purchasing any manufacturing milk from a producer, shall execute and deliver to the secretary a surety bond, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The bond shall be a single bond covering all plants within the state and shall be in an amount determined by multiplying twenty thousand dollars ($20,000) by the number of plants operated by the handler in the state.

(c) Any milk purchase agreement between a handler and a producer may provide for surety bonds, guarantees, or other forms of security in addition to the bonding requirements in this article.

SEC. 2. Section 62182 of the Food and Agricultural Code is amended to read:

62182. (a) Every handler that operates only one plant within the state, before purchasing any market milk from a producer, shall execute and deliver to the secretary a surety bond, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The minimum amount of the bond shall be based upon the average daily quantity of market milk purchased by the handler during any calendar month during a calendar year.

The minimum amount of the bond shall be as follows:

(1) Five thousand dollars ($5,000) for any handler that purchases an average daily quantity of less than 1,000 gallons.

(2) Ten thousand dollars ($10,000) for any handler that purchases an average daily quantity of at least 1,000 gallons but less than 4,000 gallons.

(3) Fifteen thousand dollars ($15,000) for any handler that purchases an average daily quantity of at least 4,000 gallons but less than 8,000 gallons.

(4) Twenty thousand dollars ($20,000) for any handler that purchases an average daily quantity of 8,000 gallons or more.

(b) Every handler that operates more than one plant within the state, before purchasing any market milk from a producer, shall execute and deliver to the secretary a surety bond, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The bond shall be a single bond covering all plants within the state and shall be in an amount determined by multiplying twenty thousand dollars ($20,000) by the number of plants operated by the handler in the state.

(c) Any milk purchase agreement between a handler and a producer may provide for additional surety bonds, guarantees, or other forms of security in addition to the bonding requirements in this article.

CHAPTER 71

An act to amend Sections 2704.13 and 2704.16 of the Streets and Highways Code, and to amend Sections 1, 3, and 4 of Chapter 697 of the Statutes of 2002, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 24, 2004. Filed with Secretary of State June 24, 2004.]

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

SECTION 1. Section 1 of Chapter 697 of the Statutes of 2002 is amended to read:

Section 1. (a) In light of the events of September 11, 2001, it is very clear that a high-speed passenger train network as described in the High-Speed Rail Authority's Business Plan is essential for the transportation needs of the growing population and economic activity of this state.

(b) The initial high-speed train network linking San Francisco and the bay area to Los Angeles will serve as the backbone of what will become an extensive 700-mile system that will link all of the state's major population centers, including Sacramento, the bay area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego, and address the needs of the state.

(c) The high-speed passenger train bond funds are intended to encourage the federal government and the private sector to make a significant contribution toward the construction of the high-speed train network.

(d) The initial segments shall be built in a manner that yields maximum benefit consistent with available revenues.

(e) After the initial investment from the state, operating revenues from the initial segments and funds from the federal government and the private sector will be used to pay for expansion of the system. It is the intent of the Legislature that the entire high-speed train system shall be constructed as quickly as possible in order to maximize ridership and the mobility of Californians.

(f) At a minimum, the entire 700-mile system described in the High-Speed Rail Authority's Business Plan should be constructed and in revenue service by 2020.

SEC. 2. Section 2704.13 of the Streets and Highways Code, as added by Section 2 of Chapter 697 of the Statutes of 2002, is amended to read:

2704.13. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Sections 2704.06 and 2704.095 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be issued and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized be issued and sold at any one time. However, bonds for the high-speed train system may not be issued and sold prior to January 1, 2008. The committee shall consider program funding needs, revenue projections, financial market conditions, and other necessary factors in determining the shortest feasible term for the bonds to be issued.

SEC. 3. Section 2704.16 of the Streets and Highways Code, as added by Section 2 of Chapter 697, is amended to read:

2704.16. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for purposes of this chapter. The amount of the request shall not exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of this chapter, less any amount borrowed pursuant to Section 2701.17. The committee may adopt a resolution for such purposes prior to January 1, 2008. The board shall execute such documents as required by the Pooled Money Investment Board to obtain and repay the loan. Any amount loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

SEC. 4. Section 3 of Chapter 697 of the Statutes of 2002 is amended to read:

Sec. 3. Section 2 of Chapter 697 of the Statutes of 2002, as amended by Sections 2 and 3 of the act amending this section in the 2003–04 Regular Session, shall take effect upon the adoption by the voters of the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st

Century, as set forth in Section 2 of Chapter 697 of the Statutes of 2002, as amended by Sections 2 and 3 of the act amending this section in the 2003–04 Regular Session.

SEC. 5. Section 4 of Chapter 697 of the Statutes of 2002 is amended to read:

Sec. 4. (a) Section 2 of Chapter 697 of the Statutes of 2003, as amended by Sections 2 and 3 of the act amending this section in the 2003-04 Regular Session, shall be submitted to the voters at the November 7, 2006, general election in accordance with provisions of the Government Code and the Elections Code governing the submission of statewide measures to the voters.

(b) Notwithstanding any other provision of law, all ballots of the November 7, 2006, general election shall have printed thereon and in a square thereof, exclusively, the words ''Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century'' and in the same square under those words, the following in 8-point type: ''This act provides for the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century. For the purpose of reducing traffic on the state's highways and roadways, upgrading commuter transportation, improving people's ability to get safely from city to city, alleviating congestion at airports, reducing air pollution, and providing for California's growing population, shall the state build a high-speed train system and improve existing passenger rail lines serving the state's major population centers by creating a rail trust fund that will issue bonds totaling $9.95 billion, paid from existing state funds at an average cost of ____ dollars ($____) per year over the 30-year life of the bonds, with all expenditures subject to an independent audit?'' The blank space in the question to appear on the ballot pursuant to this subdivision shall be filled in by the Attorney General with the appropriate figure provided by the Legislative Analyst relative to the annual average cost of the bonds. Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the measure.

(c) Notwithstanding Sections 13247 and 13281 of the Elections Code, the language in subdivision (b) shall be the only language included in the ballot label for the condensed statement of the ballot title, and the Attorney General shall not supplement, subtract from, or revise that language, except that the Attorney General may include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and Section 88003 of the Government Code. The ballot label is the condensed statement of the ballot title and the financial impact summary.

(d) Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent

of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to defer a general obligation bond measure to authorize the issuance and sale of bonds for the financing of a high-speed passenger train system from the November 2, 2004, general election ballot to the November 7, 2006, general election ballot, it is necessary that this act take effect immediately.

CHAPTER 72

An act to amend Section 13534 of the Business and Professions Code, relating to motor fuel advertising.

[Approved by Governor June 24, 2004. Filed with Secretary of State June 25, 2004.]

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

SECTION 1. Section 13534 of the Business and Professions Code is amended to read:

13534. (a) Except as provided by subdivision (b), and subdivisions (b), (c), and (d) of Section 13532, it is unlawful for any person to place any additional advertising matter on any advertising medium referred to in this article except:

(1) A description of the products offered for sale in letters or numerals not larger than the price numerals.

(2) Methods of sale, such as self-serve or full-serve, in letters not less than one-third the size of the price numerals.

(3) Words describing the type of services offered at the place of business, such as food market, carwash, tune up, and the registered trademark or trade name of the service, but not the price of the service.

(b) Subdivision (a) does not apply to electronic changeable message centers when the advertising content includes both the product offered for sale and its price in a single advertising message, or when the product and price components of the advertising message clearly relate to one another and the price neither starts nor ends the message.

CHAPTER 73

An act to amend Section 11112.4 of the Penal Code, relating to crime prevention.

[Approved by Governor June 24, 2004. Filed with Secretary of State June 25, 2004.]

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

SECTION 1. Section 11112.4 of the Penal Code is amended to read:

11112.4. (a) Within each county or group of counties eligible to receive funding under the department's master plan for equipment, that elects to participate in the Remote Access Network, a local RAN board shall be established. Where a single county is eligible to receive funding, that county's RAN board shall be the local RAN board. Where a group of counties is eligible for funding, the local RAN board shall consist of a regional board. The RAN board shall determine the placement of RAN equipment within the county or counties, and coordinate acceptance, delivery, and installation of RAN equipment. The board shall also develop any procedures necessary to regulate the ongoing use and maintenance of that equipment, adhering to the policy guidelines and procedures adopted by the department. The local board shall consider placement of equipment on the basis of the following criteria:

(1) The crime rate of the jurisdiction or jurisdictions served by the agency.

(2) The number of criminal offenses reported by the agency or agencies to the department.

(3) The potential number of fingerprint cards and latent fingerprints processed.

(4) The number of sworn personnel of the agency or agencies.

(b) Except as provided in subdivision (c), each RAN board shall be composed of seven members, as follows: a member of the board of supervisors, the sheriff, the district attorney, the chief of police of the Cal-ID member department having the largest number of sworn personnel within the county, a second chief selected by all other police chiefs within the county, a mayor elected by the city selection committee established pursuant to Section 50270 of the Government Code, and a member-at-large chosen by the other members. In any county lacking two chiefs of police, a substitute member shall be selected by the other members on the board. Groups of counties forming a region shall establish a seven-member board with each county having equal representation on the board and at least one member-at-large. If the number of participating counties precludes equal representation on a seven-member board, the size of the board shall be expanded so that each

county has at least two representatives and there is a single member-at-large.

(c) In any county with a population of 5,000,000 or more, each local board shall be composed of seven members, as follows: a member of the board of supervisors, the sheriff, the district attorney, the chief of police of the Cal-ID member department having the largest number of sworn personnel within the county, a second chief selected by all other police chiefs within the county, the mayor of the city with the greatest population within the county that has a Cal-ID member police department, and a member-at-large chosen by the other members. In any county lacking two chiefs of police, a substitute member shall be selected by the other members of the board.

(d) A county which is a part of a regional board may form a local RAN advisory board. The purpose of the local RAN advisory board shall be to provide advice and recommendations to the county's representatives on the regional RAN board. The local RAN advisory board may appoint alternate members to the regional RAN board from the local RAN advisory board to serve and work in the place of a regional RAN board member who is absent or who disqualifies himself or herself from participation in a meeting of the regional RAN board.

If a vacancy occurs in the office of a regional RAN board in a county which has established a local RAN advisory board, an alternate member selected by the local RAN advisory board may serve and vote in place of the former regional RAN board member until the appointment of a regional RAN board member is made to fill the vacancy.

CHAPTER 74

An act to amend Section 1203.1abc of the Penal Code, relating to criminal offenders.

[Approved by Governor June 25, 2004. Filed with Secretary of State June 28, 2004.]

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 ''Ex-Offender Literacy Act.''

SEC. 2. Section 1203.1abc of the Penal Code is amended to read:

1203.1abc. (a) In addition to any other terms of imprisonment, fine, and conditions of probation, the court may require any adult convicted of an offense which is not a violent felony, as defined in subdivision (c) of Section 667.5, or a serious felony, as defined in subdivision (c) of

Section 1192.7, to participate in a program that is designed to assist the person in obtaining the equivalent of a 12th grade education. In the case of a probationer, the court may require participation in either a literacy program or a General Education Development (GED) program.

(b) A probation officer may utilize volunteers from the community to provide assistance to probationers under this section.

(c) This section shall be operable in Los Angeles County as a pilot project upon approval by a majority vote of the county's board of supervisors to be conducted in two courts within the County of Los Angeles. It shall be operable in other counties only upon approval by a majority vote of a county's board of supervisors.

(d) A county probation department may utilize the volunteer services of a local college or university in evaluating the effectiveness of this program. In the County of Los Angeles, the California State University at Los Angeles (CSULA) shall evaluate the program and submit a report to the Legislature regarding the success or failure of the program. CSULA shall bear the costs of the evaluation and report.

(e) This section shall not apply to any person who is mentally or developmentally incapable of attaining the equivalent of a 12th grade education.

(f) Failure to make progress in a program under subdivision (a) is not a basis for revocation of probation.

(g) This pilot program shall be deemed successful if at least 10 percent of the persons participating in the pilot projects obtain the equivalent of a 12th grade education within three years or improve their academic performance by three grade levels within three years.

(h) It is the intent of the Legislature that any increases in adult enrollment resulting from the implementation of subdivision (a) shall not be included in the apportionment of funds for adult education pursuant to Sections 52616.17 to 52616.20, inclusive, of the Education Code.

(i) This section is repealed effective January 1, 2008, unless it is extended or made permanent by subsequent legislation.

CHAPTER 75

An act to amend Section 15602 of the Probate Code, relating to trusts.

[Approved by Governor June 25, 2004. Filed with Secretary of State June 28, 2004.]

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

SECTION 1. Section 15602 of the Probate Code is amended to read:

15602. (a) A trustee is not required to give a bond to secure performance of the trustee's duties, unless any of the following circumstances occurs:

(1) A bond is required by the trust instrument.

(2) Notwithstanding a waiver of a bond in the trust instrument, a bond is found by the court to be necessary to protect the interests of beneficiaries or other persons having an interest in the trust.

(3) An individual who is not named as a trustee in the trust instrument is appointed as a trustee by the court.

(b) Notwithstanding paragraphs (1) and (3) of subdivision (a), the court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, or permit the substitution of another bond with the same or different sureties. The court may not, however, excuse the requirement of a bond for an individual described in paragraph (3) of subdivision (a), except under compelling circumstances. For the purposes of this section, a request by all the adult beneficiaries of a trust that bond be waived for an individual described in paragraph (3) of subdivision (a) for their trust is deemed to constitute a compelling circumstance.

(c) If a bond is required, it shall be filed or served and shall be in the amount and with sureties and liabilities ordered by the court.

(d) Except as otherwise provided in the trust instrument or ordered by the court, the cost of the bond shall be charged against the trust.

(e) A trust company may not be required to give a bond, notwithstanding a contrary provision in the trust instrument.

CHAPTER 76

An act to add Section 1947.3 to the Civil Code, relating to landlord and tenant.

[Approved by Governor June 25, 2004. Filed with Secretary of State June 28, 2004.]

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

SECTION 1. Section 1947.3 is added to the Civil Code, to read:

1947.3. (a) (1) Except as provided in paragraph (2), a landlord or a landlord's agent may not demand or require cash as the exclusive form of payment of rent or deposit of security.

(2) A landlord or a landlord's agent may demand or require cash as the exclusive form of payment of rent or deposit of security if the tenant has previously attempted to pay the landlord or landlord's agent with a check drawn on insufficient funds or the tenant has instructed the drawee to stop payment on a check, draft, or order for the payment of money. The landlord may demand or require cash as the exclusive form of payment only for a period not exceeding three months following an attempt to pay with a check on insufficient funds or following a tenant's instruction to stop payment. If the landlord chooses to demand or require cash payment under these circumstances, the landlord shall give the tenant a written notice stating that the payment instrument was dishonored and informing the tenant that the tenant shall pay in cash for a period determined by the landlord, not to exceed three months, and attach a copy of the dishonored instrument to the notice. The notice shall comply with Section 827 if demanding or requiring payment in cash constitutes a change in the terms of the lease.

(3) Paragraph (2) does not enlarge or diminish a landlord's or landlord's agent's legal right to terminate a tenancy.

(b) For the purposes of this section, the issuance of a money order or a cashier's check is direct evidence only that the instrument was issued.

(c) A waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

CHAPTER 77

An act to amend Sections 4216, 4216.2, and 4216.8 of the Government Code, relating to excavation equipment.

[Approved by Governor June 28, 2004. Filed with Secretary of State June 28, 2004.]

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

SECTION 1. Section 4216 of the Government Code is amended to read:

4216. As used in this article the following definitions apply:

(a) ''Approximate location of subsurface installations'' means a strip of land not more than 24 inches on either side of the exterior surface of the subsurface installation. ''Approximate location'' does not mean depth.

(b) ''Excavation'' means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives in any of the following ways:

grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, or any other way.

(c) Except as provided in Section 4216.8, ''excavator'' means any person, firm, contractor or subcontractor, owner, operator, utility, association, corporation, partnership, business trust, public agency, or other entity which, with their, or his or her, own employees or equipment performs any excavation.

(d) ''Emergency'' means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. ''Unexpected occurrence'' includes, but is not limited to, fires, floods, earthquakes or other soil or geologic movements, riots, accidents, damage to a subsurface installation requiring immediate repair, or sabotage.

(e) ''Inquiry identification number'' means the number which is provided by a regional notification center to every person who contacts the center pursuant to Section 4216.2. The inquiry identification number shall remain valid for not more than 28 calendar days from the date of issuance, and after that date shall require regional notification center revalidation.

(f) ''Local agency'' means a city, county, city and county, school district, or special district.

(g) ''Operator'' means any person, corporation, partnership, business trust, public agency, or other entity which owns, operates, or maintains a subsurface installation. For purposes of Section 4216.1 an ''operator'' does not include an owner of real property where subsurface facilities are exclusively located if they are used exclusively to furnish services on that property and the subsurface facilities are under the operation and control of that owner.

(h) ''Regional notification center'' means a nonprofit association or other organization of operators of subsurface installations which provides advance warning of excavations or other work close to existing subsurface installations, for the purpose of protecting those installations from damage, removal, relocation, or repair.

(i) ''State agency'' means every state agency, department, division, bureau, board, or commission.

(j) ''Subsurface installation'' means any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewerlines, nonpressurized storm drains, or other nonpressurized drain lines.

SEC. 2. Section 4216.2 of the Government Code is amended to read:

4216.2. (a) Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center, at least two working days, but not more than 14 calendar days, prior to commencing that excavation, if the excavation

will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated.

(b) Except in an emergency, every excavator covered by Section 4216.8 planning to conduct an excavation on private property may contact the appropriate regional notification center if the private property is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated.

(c) The regional notification center shall provide an inquiry identification number to the person who contacts the center pursuant to this section and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation. An inquiry identification number may be validated for more than 28 days when mutually agreed between the excavator and any member operator so notified that has a subsurface installation in the area of the proposed excavation; and, it may be revalidated by notification to the regional notification center by the excavator prior to the time of its expiration.

(d) A record of all notifications by excavators and operators to the regional notification center shall be maintained for a period of not less than three years. The records shall be available for inspection by the excavator and any member, or their representative, during normal working hours and according to guidelines for inspection as may be established by the regional notification centers.

(e) As used in this section, the delineation is practical when any of the following conditions exist:

(1) When delineating a prospective excavation site with white paint could not be misleading to those persons using affected streets and highways.

(2) When the delineation could not be misinterpreted as a traffic or pedestrian control.

(3) Where an excavator can determine the exact location of an excavation prior to the time an area has been field marked pursuant to Section 4216.3.

(4) Where delineation could not be construed as duplicative.

(f) Where an excavator makes a determination that it is not practical to delineate the area to be excavated, the excavator shall contact the regional notification center to advise the operators that the excavator shall identify the area to be excavated in another manner sufficient to enable the operator to determine the area of the excavation to be field marked pursuant to Section 4216.3.

SEC. 3. Section 4216.8 of the Government Code is amended to read:

4216.8. This article does not apply to any of the following persons:

(a) An owner of real property who contracts for an excavation project on the property, not requiring a permit issued by a state or local agency, with a contractor or subcontractor licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code.

(b) An owner of residential real property, not engaged as a contractor or subcontractor licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code, who as part of improving his or her principal residence or appurtenances thereto is performing or having performed excavation work not requiring a permit issued by a state or local agency.

(c) Any person or private entity that leases or rents power operated or power-driven excavating or boring equipment, regardless of whether an equipment operator is provided for that piece of equipment or not, to a contractor or subcontractor licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code, if the signed rental agreement between the person or private entity and the contractor or subcontractor contains the following provision:

> ''It is the sole responsibility of the lessee or renter to follow the requirements of the regional notification center law pursuant to Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code. By signing this contract, the lessee or renter accepts all liabilities and responsibilities contained in the regional notification center law.''

CHAPTER 78

An act to add Article 4.5 (commencing with Section 123620) to Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, relating to maternal and child health.

[Approved by Governor June 28, 2004. Filed with Secretary of State June 28, 2004.]

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

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

(a) The federal Food and Drug Administration (FDA) defines ultrasound imaging as a diagnostic medical procedure that uses high frequency sound waves to produce diagnostic images, or sonograms, of organs, tissues, or blood flow inside the body.

(b) Ultrasound imaging has numerous legitimate uses, including all of the following:

(1) Diagnosing pregnancy.

(2) Determining fetal age.

(3) Diagnosing congenital abnormalities.

(4) Evaluating position of the placenta.

(5) Determining multiple pregnancies.

(c) Facilities for performing fetal ultrasound for the purpose of providing parents with ''keepsake videos,'' using the latest ultrasound technology to produce high-resolution images of babies developing in the womb, are gaining nationwide popularity. At these facilities, ultrasounds may be performed by untrained and unlicensed technicians, often without a doctor's prescription. In addition, women are sometimes exposed to the ultrasound for longer than the time specified by the FDA for fetal monitoring.

(d) The FDA has disapproved the promotion, sale, or lease of ultrasound equipment for making ''keepsake'' fetal videos. This practice is also discouraged by the American Institute of Ultrasound in Medicine.

SEC. 2. Article 4.5 (commencing with Section 123620) is added to Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, to read:

Article 45. Fetal Ultrasound

123620. A person or facility that offers fetal ultrasound, or a similar procedure, for keepsake or entertainment purposes, shall disclose to a client prior to performing the procedure, in writing, the following statement: ''The federal Food and Drug Administration has determined that the use of medical ultrasound equipment for other than medical purposes, or without a physician's prescription, is an unapproved use.''

CHAPTER 79

An act to amend and repeal Sections 15819.90 and 15819.95 of, and to repeal Sections 15819.80, 15819.85, and 15819.92 of, the Government Code, relating to veterans.

[Approved by Governor June 28, 2004. Filed with Secretary of State June 28, 2004.]

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

SECTION 1. Section 15819.80 of the Government Code is repealed.

SEC. 2. Section 15819.85 of the Government Code is repealed.

SEC. 3. Section 15819.90 of the Government Code is amended to read:

15819.90. (a) It is the intent of the Legislature to make an appropriation for three additional sites of the Southern California Veterans' Home, following construction of the veterans' home at Barstow, for a total of four sites.

(b) (1) (A) The board shall issue revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to Chapter 5 (commencing with Section 15830) to finance the construction of an additional site of the Southern California Veterans' Home only in accordance with subparagraph (B).

(B) Authorization and bond issuance for the second site shall take place after the department certifies that the construction of the first site, the veterans' home at Barstow, has been completed and opened, and demonstrates to the State Public Works Board that the facility is fully operational and that there is a demonstrated demand for a second site.

(2) The second, third, and fourth sites shall be in addition to the first site located at Barstow.

(c) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold pursuant to Chapter 5 (commencing with Section 15830) for capital outlay for this purpose shall not exceed the sum of twelve million dollars ($12,000,000). This amount shall be available as necessary for the site studies, suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and equipment of site two of the Southern California Veterans Home. These funds shall also be used for repayment of any loan made pursuant to former Section 15819.90, as added by Chapter 943 of the Statutes of 1995, for costs related to the first and second sites.

(d) In addition to the funds appropriated pursuant to subdivision (g), the sum of sixty-six million dollars ($66,000,000) in federal matching funds available pursuant to the State Veterans' Home Assistance Improvement Act of 1977 (38 U.S.C.A. Sec. 8131 et seq.), is hereby appropriated to the board on behalf of the Department of Veterans Affairs for the purposes of construction or repayment of any loan related to the second, third, and fourth sites of the Southern California Veterans' Home. In the event that bonds are not issued or sold, any loans for the purposes of this section or former Section 15819.90, shall be repaid from the department's annual support appropriations.

(e) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the costs of performance of all functions referred to in subdivision (c), and any additional amounts, as specified in subdivision (h).

(f) The amount of negotiable bond anticipation notes to be sold pursuant to this section shall not exceed the amount of revenue bonds or negotiable notes authorized by this section.

(g) Notwithstanding Section 13340, funds derived for the purposes of this section from the financing methods of Chapter 5 (commencing with Section 15830) are hereby appropriated, without regard to fiscal year, to the board on behalf of the Department of Veterans Affairs for the construction or repayment of any loans related to the second site of the Southern California Veterans' Home.

(h) The State Public Works Board may borrow funds for all phases of the projects from the Pooled Money Investment Account pursuant to Sections 16212 and 16313, and any other legal fund sources.

(i) The board may authorize the augmentation of the cost of the construction of the sites set forth in this chapter pursuant to the board's authority under Section 13332.11. In addition, the board may authorize any additional amounts necessary to pay the costs of financing, including, but not limited to, the payment of interest during construction of the sites, any additional amount as may be authorized by the board to pay the cost of financing a reasonably required reserve fund, interest payable on any interim loan for the homes from the Pooled Money Investment Account pursuant to Section 16312, and the costs of issuance of permanent financing of the sites. Notwithstanding subdivision (d) of Section 13332.11, the board shall defer all augmentations in excess of 10 percent of the amount appropriated for each capital outlay project until the Legislature makes additional funds available for the specific project.

(j) The Department of Veterans Affairs is hereby authorized to enter into any lease agreement with the State Public Works Board necessary to achieve completion of the construction phase of the second, third, and fourth Southern California Veterans' Home project sites. The Director of Veterans Affairs shall notify the Chairperson of the Joint Legislative Budget Committee of the director's intention to execute any lease agreement authorized by this section at least 45 days prior to its execution.

(k) This section shall be repealed on January 1 following certification to the Public Works Board by the Secretary of the Department of Veterans Affairs, and with Department of Finance concurrence, that the construction project at Chula Vista is complete and that all accounting records are closed.

SEC. 4. Section 15819.92 of the Government Code is repealed.

SEC. 5. Section 15819.95 of the Government Code is amended to read:

15819.95. (a) The funds generated from the issuance of the bonds pursuant to Section 15819.90 shall be expended only upon receipt of the matching amount of federal funds from the United States Department of Veterans Affairs. The Director of Veterans Affairs shall notify the Chief Clerk of the Assembly, the Secretary of State, and the State Public Works Board in writing that the federal matching funds have been provided, and the Chief Clerk of the Assembly shall publish this notification in the Assembly Journal.

The total amount of federal matching funds to be received is twenty-two million dollars ($22,000,000) for each of the second, third, and fourth sites, however, the entire amount does not need to be received prior to expenditure of the funds from the bond issuance authorized by Section 15819.90, if there has been a federal commitment to provide those matching funds. The board may allocate funds to the Department of Veterans Affairs for expenditures that are equal to a 35-percent portion of the total acquisition and construction costs.

(b) This section shall be repealed on January 1 following certification to the Public Works Board by the Secretary of the Department of Veterans Affairs, and with Department of Finance concurrence, that the construction project at Chula Vista is complete and that all accounting records are closed.

CHAPTER 80

An act to amend Section 19605.73 of the Business and Professions Code, relating to horse racing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 29, 2004. Filed with Secretary of State June 30, 2004.]

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

SECTION 1. Section 19605.73 of the Business and Professions Code is amended to read:

19605.73. (a) Racing associations, fairs, and the organization responsible for contracting with racing associations and fairs with respect to the conduct of racing meetings, may form a private, statewide marketing organization to market and promote thoroughbred and fair horse racing, and to obtain, provide, or defray the cost of workers' compensation coverage for stable employees and jockeys of

thoroughbred trainers. The organization shall consist of the following members: two members, one from the northern zone and one from the combined central and southern zones, appointed by the thoroughbred racetracks; two members, one from the northern zone and one from the combined central and southern zones, appointed by the owners' organization responsible for contracting with associations and fairs with respect to the conduct of racing meetings; and two members, one from the northern zone and one from the combined central and southern zones, appointed by the organization representing racing and satellite fairs.

(b) The marketing organization formed pursuant to subdivision (a) shall annually submit to the board a statewide marketing and promotion plan and a thoroughbred trainers' workers' compensation defrayal plan for thoroughbred and fair horse racing that encompasses all geographical zones in the state, and which includes the manner in which funds were expended in the implementation of the plan for the previous calendar year. The plan shall be implemented as determined by the organization. The organization shall receive input from all interested industry participants and may utilize outside consultants in developing the annual marketing plan.

(c) In addition to the distributions specified in subdivisions (a) and (b) of Section 19605.7, and in Sections 19605.71 and 19605.72, for thoroughbred and fair meetings only, from the amount that would normally be available for commissions and purses, an amount equal to 0.4 percent of the total amount handled by each satellite wagering facility shall be distributed to the statewide marketing organization formed pursuant to subdivision (a) for the promotion of thoroughbred and fair horse racing and to defray the cost of workers' compensation coverage for stable employees and jockeys of thoroughbred trainers. Not more than one-sixth of the total amount available annually pursuant to this subdivision shall be used to defray the cost of workers' compensation insurance. Any of the promotion funds that are not expended in the year in which they are collected may be expended in the following year. If promotion funds expended in any one year exceed the amount collected for that year, the funds expended in the following year shall be reduced by the excess amount.

(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. Any moneys held by the organization shall, in the event this section is repealed, be distributed to the organization formed pursuant to Section 19608.2, for purposes of that section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

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

In order to prevent the expiration of this marketing program, which is important to the vitality of the horse racing industry in California, it is necessary that this bill take effect immediately.

CHAPTER 81

An act to amend Section 56505 of the Education Code, relating to special education.

[Approved by Governor June 29, 2004. Filed with Secretary of State June 30, 2004.]

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

SECTION 1. Section 56505 of the Education Code is amended to read:

56505. (a) The state hearing shall be conducted in accordance with regulations adopted by the board.

(b) The hearing shall be held at a time and place reasonably convenient to the parent or guardian and the pupil.

(c) The hearing shall be conducted by a person knowledgeable in the laws governing special education and administrative hearings pursuant to Section 56504.5, and who has satisfactorily completed training pursuant to this subdivision. The superintendent shall establish standards for the training of hearing officers, the degree of specialization of the hearing officers, and the quality control mechanisms to be used to ensure that the hearings are fair and the decisions are accurate. The hearing officer shall encourage the parties to a hearing to consider the option of mediation as an alternative to a hearing.

(d) Pursuant to subsection (a) of Section 300.514 of Title 34 of the Code of Federal Regulations, during the pendency of the hearing proceedings, including the actual state-level hearing, or judicial proceeding regarding a due process hearing, the pupil shall remain in his or her present placement, except as provided in Section 300.526 of Title 34 of the Code of Federal Regulations, unless the public agency and the parent or guardian agree otherwise. A pupil applying for initial admission to a public school shall, with the consent of his or her parent or guardian, be placed in the public school program until all proceedings have been completed. As provided in subsection (c) of Section 300.514 of Title 34 of the Code of Federal Regulations, if the decision of a hearing officer in a due process hearing or a state review official in an

administrative appeal agrees with the pupil's parent or guardian that a change of placement is appropriate, that placement shall be treated as an agreement between the state or local agency and the parent or guardian.

(e) Any party to the hearing held pursuant to this section shall be afforded the following rights consistent with state and federal statutes and regulations:

(1) The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of individuals with exceptional needs.

(2) The right to present evidence, written arguments, and oral arguments.

(3) The right to confront, cross-examine, and compel the attendance of witnesses.

(4) The right to a written, or, at the option of the parents or guardians, electronic verbatim record of the hearing.

(5) The right to written, or, at the option of the parent or guardian, electronic findings of fact and decisions. The record of the hearing and the findings of fact and decisions shall be provided at no cost to parents or guardians in accordance with paragraph (2) of subsection (c) of Section 300.509 of Title 34 of the Code of Federal Regulations. The findings and decisions shall be made available to the public after any personally identifiable information has been deleted consistent with the confidentiality requirements of subsection (c) of Section 1417 of Title 20 of the United States Code and shall also be transmitted to the Advisory Commission on Special Education pursuant to paragraph (4) of subsection (h) of Section 1415 of Title 20 of the United States Code.

(6) The right to be informed by the other parties to the hearing, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues. Upon the request of a parent who is not represented by an attorney, the agency responsible for conducting hearings shall provide a mediator to assist the parent in identifying the issues and the proposed resolution of the issues.

(7) The right to receive from other parties to the hearing, at least five business days prior to the hearing, a copy of all documents and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing. Included in the material to be disclosed to all parties at least five business days prior to a hearing shall be all assessments completed by that date and recommendations based on the assessments that the parties intend to use at the hearing.

(8) The right, pursuant to paragraph (3) of subsection (a) of Section 300.509 of Title 34 of the Code of Federal Regulations, to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

(f) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision mailed to all parties to the hearing within 45 days from the receipt by the superintendent of the request for a hearing. Either party to the hearing may request the hearing officer to grant an extension. The extension shall be granted upon a showing of good cause. Any extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension.

(g) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(h) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

(i) In a hearing conducted pursuant to this section, the hearing officer may not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the individualized education program.

(j) This chapter does not preclude a party aggrieved by the findings and decisions in a hearing under this section from exercising the right to appeal the decision to a state court of competent jurisdiction. An aggrieved party may also exercise the right to bring a civil action in a district court of the United States without regard to the amount in controversy, pursuant to Section 300.512 of Title 34 of the Code of Federal Regulations. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of any administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), unless the public education agency and the parents of the child agree otherwise, the child involved in the hearing shall remain in his or her present educational placement. Any action brought under this subdivision shall adhere to the provisions of subsection (b) of Section 300.512 of Title 34 of the Code of Federal Regulations.

(k) Any request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within three years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.

CHAPTER 82

An act to amend Sections 22971, 22974.7, 22979, 22979.4, and 22980.2 of, and to add Sections 22972.1, 22978.8, and 22983 to, the Business and Professions Code, and to amend Sections 30211 and 30437 of the Revenue and Taxation Code, relating to tobacco products, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 29, 2004. Filed with Secretary of State June 30, 2004.]

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

SECTION 1. Section 22971 of the Business and Professions Code is amended to read:

22971. For purposes 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.

(r) ''Brand family'' has the same meaning as that term is defined in paragraph (2) of subdivision (a) of Section 30165.1 of the Revenue and Taxation Code.

SEC. 2. Section 22972.1 is added to the Business and Professions Code, to read:

22972.1. (a) Notwithstanding Section 22972 or Section 22973, the board may issue to a retailer a temporary license with a scheduled expiration date, as determined by the board, that occurs on or before September 30, 2004.

(b) A temporary license issued pursuant to this section shall be automatically terminated upon the board's issuance of a license pursuant to Section 22973.1.

(c) A temporary license issued pursuant to this section is subject to the same suspension, revocation, and forfeiture provisions that apply to licenses issued by the board pursuant to Section 22973.1.

SEC. 3. Section 22974.7 of the Business and Professions Code is amended to read:

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 seized cigarettes or tobacco products.

(2) Five thousand dollars ($5,000).

SEC. 4. Section 22978.8 is added to the Business and Professions Code, to read:

22978.8. The board shall include on its Web site the name of any wholesaler or distributor whose license has been suspended or revoked.

SEC. 5. Section 22979 of the Business and Professions Code is amended to read:

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. 1331 et seq.) for the reporting of ingredients added to cigarettes. For purposes of the federal Cigarette Labeling and Advertising Act requirement, cigars weighing three pounds or less per 1,000 are excluded from the definition of cigarette.

(d) A license issued to a manufacturer or an importer under this division is only valid with respect to the manufacturer or importer designated on the license and may not be transferred or assigned to another manufacturer or importer.

(e) Any manufacturer or importer that is issued a license under this division that does not commence business in the manner specified or designated in the license, ceases to do business in the manner specified or designated in the license, or is notified that the license is suspended or revoked, shall immediately surrender that license to the board.

(f) (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 the 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.

SEC. 6. Section 22979.4 of the Business and Professions Code is amended to read:

22979.4. All 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 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 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.

SEC. 7. Section 22980.2 of the Business and Professions Code is amended to read:

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 the board or 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.

SEC. 8. Section 22983 is added to the Business and Professions Code, to read:

22983. The provisions of Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code apply with respect to the collection of the fees, civil fines, and penalties imposed pursuant to this division.

SEC. 9. Section 30211 of the Revenue and Taxation Code is amended to read:

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 give the unlicensed person notice of that determination 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.

SEC. 10. Section 30437 of the Revenue and Taxation Code is amended to read:

30437. Notice of the seizure and forfeiture of the property described in Section 30436 shall be given by the board as follows:

(a) Notice shall be given by personal service or by certified mail to all persons known by the board to have any right, title or interest in the property.

(b) (1) Except as provided in paragraph (2), the board shall include a notice of seizure and forfeiture on its Web site for a period of six months from the notice of seizure.

(2) Web site notification is not required when the amount of cigarettes seized is less than 61 cartons of 200 cigarettes each or an equivalent amount of tobacco products.

(c) Notice shall include a description of the property, the reason for the seizure, and the time and place of the seizure.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect commerce and to continue the collection of fees imposed on distributors, wholesalers, and retailers of tobacco products, it is necessary that this act take effect immediately.

CHAPTER 83

An act to amend Section 3352 of the Labor Code, relating to workers' compensation.

[Approved by Governor June 29, 2004. Filed with Secretary of State June 30, 2004.]

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

SECTION 1. Section 3352 of the Labor Code is amended to read:

3352. ''Employee'' excludes the following:

(a) Any person defined in subdivision (d) of Section 3351 who is employed by his or her parent, spouse, or child.

(b) Any person performing services in return for aid or sustenance only, received from any religious, charitable, or relief organization.

(c) Any person holding an appointment as deputy clerk or deputy sheriff appointed for his or her own convenience, and who receives no compensation from the county or municipal corporation or from the citizens thereof for his or her services as the deputy. This exclusion is operative only as to employment by the county or municipal corporation and does not deprive any person so deputized from recourse against a private person employing him or her for injury occurring in the course of and arising out of the employment.

(d) Any person performing voluntary services at or for a recreational camp, hut, or lodge operated by a nonprofit organization, exempt from federal income tax under Section 101(6) of the Internal Revenue Code, of which he or she or a member of his or her family is a member and who receives no compensation for those services other than meals, lodging, or transportation.

(e) Any person performing voluntary service as a ski patrolman who receives no compensation for those services other than meals or lodging or the use of ski tow or ski lift facilities.

(f) Any person employed by a ski lift operator to work at a snow ski area who is relieved of and not performing any prescribed duties, while participating in recreational activities on his or her own initiative.

(g) Any person, other than a regular employee, participating in sports or athletics who receives no compensation for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, or other expenses incidental thereto.

(h) Any person defined in subdivision (d) of Section 3351 who was employed by the employer to be held liable for less than 52 hours during the 90 calendar days immediately preceding the date of the injury for injuries, as defined in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury for injuries, as defined in Section 5412, or who earned less than one hundred dollars ($100) in wages from the employer during the 90 calendar days immediately preceding the date of the injury for injuries, as defined in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury for injuries, as defined in Section 5412.

(i) Any person performing voluntary service for a public agency or a private, nonprofit organization who receives no remuneration for the services other than meals, transportation, lodging, or reimbursement for incidental expenses.

(j) Any person, other than a regular employee, performing officiating services relating to amateur sporting events sponsored by any public agency or private, nonprofit organization, who receives no remuneration

for these services other than a stipend for each day of service no greater than the amount established by the Department of Personnel Administration as a per diem expense for employees or officers of the state. The stipend shall be presumed to cover incidental expenses involved in officiating, including, but not limited to, meals, transportation, lodging, rule books and courses, uniforms, and appropriate equipment.

(k) Any student participating as an athlete in amateur sporting events sponsored by any public agency, public or private nonprofit college, university or school, who receives no remuneration for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.

(*l*) Any law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

(m) Any law enforcement officer who is regularly employed by the Oregon State Police, the Nevada Department of Motor Vehicles and Public Safety, or the Arizona Department of Public Safety and who is acting as a peace officer in this state pursuant to subdivision (a) of Section 830.32 of the Penal Code.

(n) Any person, other than a regular employee, performing services as a sports official for an entity sponsoring an intercollegiate or interscholastic sports event, or any person performing services as a sports official for a public agency, public entity, or a private nonprofit organization, which public agency, public entity, or private nonprofit organization sponsors an amateur sports event. For purposes of this subdivision, ''sports official'' includes an umpire, referee, judge, scorekeeper, timekeeper, or other person who is a neutral participant in a sports event.

(o) Any person who is an owner-builder, as defined in subdivision (a) of Section 50692 of the Health and Safety Code, who is participating in a mutual self-help housing program, as defined in Section 50087 of the Health and Safety Code, sponsored by a nonprofit corporation.

CHAPTER 84

An act to amend Section 42464 of the Public Resources Code, relating to hazardous and solid waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 2004. Filed with
Secretary of State June 30, 2004.]

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

SECTION 1. Section 42464 of the Public Resources Code is amended to read:

42464. (a) On and after November 1, 2004, a covered electronic waste recycling fee is hereby imposed upon the first sale in the state of a covered electronic device to a consumer by a retailer.

(b) A retailer that sells a covered electronic device to a consumer shall collect the fee imposed under subdivision (a) for each covered electronic device sold by the retailer in the following amounts:

(1) Six dollars ($6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.

(2) Eight dollars ($8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.

(3) Ten dollars ($10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

(c) The electronic waste recycling fee collected pursuant to this section shall be transmitted to the board in accordance with a schedule and procedure that the board shall establish pursuant to Sections 42475 and 42475.2. The covered electronic waste recycling fees shall be deposited in the account pursuant to Section 42476.

(d) A retailer selling a covered electronic device may retain 3 percent of the covered electronic waste recycling fee as reimbursement for any costs associated with the collection of the fee.

(e) On and after July 1, 2005, and at least once every two years thereafter, the board, in collaboration with the department, shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to this chapter. The board shall base any adjustment of the covered electronic waste recycling fee on the both of following factors:

(1) The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of 100 percent of the covered electronic waste that is projected to be recycled in the state.

(2) The sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account.

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

In order to make statutory changes needed to change from July 1, 2004, to November 1, 2004, the date for beginning the collection of an electronic waste recycling fee, it is necessary that this act take effect immediately.

CHAPTER 85

An act to amend Section 116.5 of the Insurance Code, relating to auto insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 2004. Filed with Secretary of State June 30, 2004.]

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

SECTION 1. Section 116.5 of the Insurance Code is amended to read:

116.5. An express warranty warranting a motor vehicle lubricant, treatment, fluid, or additive that covers incidental or consequential damage resulting from a failure of the lubricant, treatment, fluid, or additive, shall constitute automobile insurance, unless all of the following requirements are met:

(a) The obligor is the primary manufacturer of the product. For the purpose of this section, ''manufacturer'' means a person who can prove clearly and convincingly that the per unit cost of owned or leased capital goods, including the factory, plus the per unit cost of nonsubcontracted labor, exceeds twice the per unit cost of raw materials. ''Manufacturer'' also means a person who has formulated or produced, and continuously offered in this state for more than nine years, a motor vehicle lubricant, treatment, fluid, or additive.

(b) The commissioner has issued a written determination that the obligor is a manufacturer as defined in subdivision (a). An obligor shall provide the commissioner with all information, documents, and affidavits reasonably necessary for this determination to be made. Approval by the commissioner shall be obtained prior to January 1, 2004, or prior to the issuance of a warranty subject to this section, whichever is later. If the commissioner determines that the obligor is not a manufacturer, the obligor may obtain a hearing in accordance with

Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The agreement covers only damage incurred while the product was in the vehicle.

(d) The agreement is provided automatically with the product at no extra charge.

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

In order to prevent unintended consequences with respect to businesses affected by current law, it is necessary that this act take effect immediately.

CHAPTER 86

An act to add Chapter 8.7 (commencing with Section 1365) to Division 6 of the Military and Veterans Code, relating to veterans.

[Approved by Governor June 30, 2004. Filed with Secretary of State July 1, 2004.]

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

SECTION 1. Chapter 8.7 (commencing with Section 1365) is added to Division 6 of the Military and Veterans Code, to read:

CHAPTER 8.7. VETERANS APPRECIATION WEEK

1365. In recognition of the efforts and sacrifices of veterans of the United States Armed Forces, the second full week in November is hereby annually designated as Veterans Appreciation Week.

CHAPTER 87

An act to add Part 4 (commencing with Section 18000) to Division 7 of the Business and Professions Code, relating to business.

[Approved by Governor June 30, 2004. Filed with Secretary of State July 1, 2004.]

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

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

(a) Microenterprises create jobs, build the economies of communities, and help individuals and families earn the income needed to be economically self-sufficient.

(b) Microenterprises are generally started by individuals of low and moderate income for the purpose of creating a job or extra income for themselves and their families.

(c) Seventy-two percent of low-income microentrepreneurs increased their household income over five years by an average of eight thousand four hundred eighty-four dollars ($8,484), and 61 percent decreased their reliance on public assistance.

(d) Individuals who seek to create their own employment opportunities through a microenterprise could benefit from training, technical assistance, and access to capital.

(e) Healthy microenterprises are vital to the California economy.

(f) Between 1995 and 2000, 44 percent of all new job growth in California was created by microenterprises.

(g) In 2000, 2.2 million Californians were either self-employed or working for a microenterprise.

SEC. 2. Part 4 (commencing with Section 18000) is added to Division 7 of the Business and Professions Code, to read:

PART 4. MICROENTERPRISES

18000. (a) (1) For purposes of this part, ''microenterprise'' means a sole proprietorship, partnership, or corporation that meets all of the following requirements:

(A) Has fewer than five employees, including the owner.

(B) Is part time or full time.

(C) Generally lacks access to conventional loans, equity, or other banking services.

(2) Microenterprises are distinct from small businesses or microbusinesses and include, but are not limited to, businesses that provide child development services, businesses that provide landscaping services, businesses that provide building maintenance, businesses that provide personal and business services, businesses that provide specialty food products, and home-based businesses.

(b) For purposes of this part, ''microenterprise development provider'' means a nonprofit or public agency that provides self-employment training, technical assistance, and access to microloans to individuals seeking to become self-employed or to expand their current business.

18001. (a) Every city, county, and city and county is encouraged to access microenterprise development in order to create new jobs and income opportunities for individuals of low and moderate income.

(b) Every city, county, and city and county is encouraged to include microenterprise development as a part of their economic development strategy.

(c) California communities and the public agencies that serve them, such as workforce investment boards, community colleges, and local economic development agencies, are encouraged to promote local partnerships that invest in microenterprise development.

CHAPTER 88

An act to amend Sections 2472 and 2484 of, and to repeal and add Section 2493 of, the Business and Professions Code, relating to podiatric medicine.

[Approved by Governor June 30, 2004. Filed with Secretary of State July 1, 2004.]

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

SECTION 1. Section 2472 of the Business and Professions Code is amended to read:

2472. (a) The certificate to practice podiatric medicine authorizes the holder to practice podiatric medicine.

(b) As used in this chapter, ''podiatric medicine'' means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle and tendons that insert into the foot and the nonsurgical treatment of the muscles and tendons of the leg governing the functions of the foot.

(c) A doctor of podiatric medicine may not administer an anesthetic other than local. If an anesthetic other than local is required for any procedure, the anesthetic shall be administered by another health care practitioner licensed under this division, who is authorized to administer the required anesthetic within the scope of his or her practice.

(d) (1) A doctor of podiatric medicine who is ankle certified by the board on and after January 1, 1984, may do the following:

(A) Perform surgical treatment of the ankle and tendons at the level of the ankle pursuant to subdivision (e).

(B) Perform services under the direct supervision of a physician and surgeon, as an assistant at surgery, in surgical procedures that are otherwise beyond the scope of practice of a doctor of podiatric medicine.

(C) Perform a partial amputation of the foot no further proximal than the Chopart's joint.

(2) Nothing in this subdivision shall be construed to permit a doctor of podiatric medicine to function as a primary surgeon for any procedure beyond his or her scope of practice.

(e) A doctor of podiatric medicine may perform surgical treatment of the ankle and tendons at the level of the ankle only in the following locations:

(1) A licensed general acute care hospital, as defined in Section 1250 of the Health and Safety Code.

(2) A licensed surgical clinic, as defined in Section 1204 of the Health and Safety Code, if the doctor of podiatric medicine has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in subparagraph (1) and meets all the protocols of the surgical clinic.

(3) An ambulatory surgical center that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, if the doctor of podiatric medicine has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in subparagraph (1) and meets all the protocols of the surgical center.

(4) A freestanding physical plant housing outpatient services of a licensed general acute care hospital, as defined in Section 1250 of the Health and Safety Code, if the doctor of podiatric medicine has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in paragraph (1). For purposes of this section, a ''freestanding physical plant'' means any building that is not physically attached to a building where inpatient services are provided.

(5) An outpatient setting accredited pursuant to subdivision (g) of Section 1248.1 of the Health and Safety Code.

(f) A doctor of podiatric medicine shall not perform an admitting history and physical examination of a patient in an acute care hospital where doing so would violate the regulations governing the Medicare program.

(g) The amendment of this section made at the 1983–84 Regular Session of the Legislature is intended to codify existing practice.

(h) A podiatrist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.

SEC. 2. Section 2484 of the Business and Professions Code is amended to read:

2484. In addition to any other requirements of this chapter, before a certificate to practice podiatric medicine may be issued, each applicant shall show by evidence satisfactory to the board, submitted directly to the board by the sponsoring institution, that he or she has satisfactorily completed at least two years of postgraduate podiatric medical and podiatric surgical training in a general acute care hospital approved by the Council of Podiatric Medical Education.

SEC. 3. Section 2493 of the Business and Professions Code is repealed.

SEC. 4. Section 2493 is added to the Business and Professions Code, to read:

2493. (a) An applicant for a certificate to practice podiatric medicine shall pass an examination in the subjects required by Section 2483.

(b) The board shall require a passing score on the National Board of Podiatric Medical Examiners Part III examination that is consistent with the postgraduate training requirement in Section 2484. The board, as of July 1, 2005, shall require a passing score one standard error of measurement higher than the national passing scale score until such time as the National Board of Podiatric Medical Examiners recommends a higher passing score consistent with Section 2484. In consultation with the Office of Examination Resources of the Department of Consumer Affairs, the board shall ensure that the Part III examination adequately evaluates the full scope of practice established by Section 2472, including amputation and other foot and ankle surgical procedures, pursuant to Section 139.

CHAPTER 89

An act to amend Sections 25296.09 and 25297.1 of the Health and Safety Code, relating to hazardous substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 2004. Filed with Secretary of State July 1, 2004.]

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

SECTION 1. Section 25296.09 of the Health and Safety Code is amended to read:

25296.09. (a) (1) If the board enters into an agreement with a local agency and the Santa Clara Valley Water District pursuant to subdivision (j) of Section 25297.1, the Santa Clara Valley Water District shall have

the same authority and responsibility as a local agency for purposes of Sections 25296.10 to 25297.2, inclusive, and for purposes of Sections 25299.36, 25299.38, 25299.39.2, 25299.39.3, 25299.51, 25299.53, and 25299.57.

(2) Paragraph (1) shall remain operative only until June 30, 2005.

(3) The inoperation of paragraph (1) does not affect the validity of any action taken by the Santa Clara Valley Water District before June 30, 2005, and does not provide a defense for an owner, operator, or other responsible party who fails to comply with that action.

(4) Nothing in this section implies that the Santa Clara Valley Water District has CUPA authority other than authority for the local oversight program in accordance with paragraph (1).

(b) (1) The Legislature hereby finds and declares that, beginning in 1988, and continuing each year since that date, the Santa Clara Valley Water District has had a role in implementing the requirements of the provisions listed in subdivision (a).

(2) The Legislature hereby finds and declares that the funding provided by the state to the Santa Clara Valley Water District for the work described in paragraph (1) is hereby ratified.

(c) (1) Any action taken by the Santa Clara Valley Water District that a local agency is otherwise authorized to take pursuant to Sections 25296.10 to 25297.2, inclusive, and Sections 25299.36, 25299.38, 25299.39.2, 25299.39.3, 25299.51, 25299.53, and 25299.57, and that was taken by the Santa Clara Valley Water District on and after January 1, 1988, and continuing on and before January 1, 2005, or until the effective date of an agreement entered into pursuant to subdivision (j) of Section 25297.1, whichever date occurs first, is hereby ratified as having been taken pursuant to this chapter and Chapter 6.75 (commencing with Section 25299.10). However, this ratification applies only to an action that would be valid only if an agreement pursuant to subdivision (j) of Section 25297.1 had been in effect at the time of the action and that otherwise complies with applicable law.

(2) This subdivision does not apply to any action taken by the Santa Clara Valley Water District that is the subject of a civil action pending on June 12, 2003.

SEC. 2. Section 25297.1 of the Health and Safety Code is amended to read:

25297.1. (a) In addition to the authority granted to the board pursuant to Division 7 (commencing with Section 13000) of the Water Code and to the department pursuant to Chapter 6.8 (commencing with Section 25300), the board, in cooperation with the department, shall develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies. In

implementing the local oversight program, the agreement specified in subdivision (b) shall be between the board and the local agency. The board shall select local agencies for participation in the program from among those local agencies that apply to the board, giving first priority to those local agencies that have demonstrated prior experience in cleanup, abatement, or other actions necessary to remedy the effects of unauthorized releases of hazardous substances from underground storage tanks. The board shall select only those local agencies that have implemented this chapter and that, except as provided in Section 25404.5, have begun to collect and transmit to the board the surcharge or fees pursuant to subdivision (b) of Section 25287.

(b) In implementing the local oversight program described in subdivision (a), the board may enter into an agreement with any local agency to perform, or cause to be performed, any cleanup, abatement, or other action necessary to remedy the effects of a release of hazardous substances from an underground storage tank with respect to which the local agency has enforcement authority pursuant to this section. The board may not enter into an agreement with a local agency for soil contamination cleanup or for groundwater contamination cleanup unless the board determines that the local agency has a demonstrated capability to oversee or perform the cleanup. The implementation of the cleanup, abatement, or other action shall be consistent with procedures adopted by the board pursuant to subdivision (d) and shall be based upon cleanup standards specified by the board or regional board.

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

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

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

(2) The content of the agreements which may be entered into by the board and the local agency.

(3) Procedures by which a responsible party may petition the board or a regional board for review, pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 of the Water Code, or pursuant to Chapter 9.2 (commencing with Section 2250) of Division 3 of Title 23 of the California Code of Regulations, or any successor regulation, as applicable, of actions or decisions of the local agency in implementing the cleanup, abatement, or other action.

(4) Protocols for assessing and recovering money from responsible parties for any reasonable and necessary costs incurred by the local agency in implementing this section, as specified in subdivision (i), unless the cleanup or abatement action is subject to subdivision (d) of Section 25296.10.

(5) Quantifiable measures to evaluate the outcome of a pilot program established pursuant to this section.

(e) Any agreement between the regional board and a local agency to carry out a local oversight program pursuant to this section shall require both of the following:

(1) The local agency shall establish and maintain accurate accounting records of all costs it incurs pursuant to this section and shall periodically make these records available to the board. The Controller may annually audit these records to verify the hourly oversight costs charged by a local agency. The board shall reimburse the Controller for the cost of the audits of a local agency's records conducted pursuant to this section.

(2) The board and the department shall make reasonable efforts to recover costs incurred pursuant to this section from responsible parties, and may pursue any available legal remedy for this purpose.

(f) The board shall develop a system for maintaining a database for tracking expenditures of funds pursuant to this section, and shall make this data available to the Legislature upon request.

(g) (1) Sections 25355.5 and 25356 do not apply to expenditures from the Hazardous Substance Cleanup Fund for oversight of abatement of releases from underground storage tanks as part of the local oversight program established pursuant to this section.

(2) A local agency that enters into an agreement pursuant to subdivision (b) shall notify the responsible party, for any site subject to a cleanup, abatement, or other action taken pursuant to the local oversight program established pursuant to this section, that the responsible party is liable for not more than 150 percent of the total amount of site-specific oversight costs actually incurred by the local agency.

(h) Any aggrieved person may petition the board or regional board for review of the action or failure to act of a local agency that enters into an agreement pursuant to subdivision (b), at a site subject to cleanup, abatement, or other action conducted as part of the local oversight program established pursuant to this section, in accordance with the procedures adopted by the board or regional board pursuant to subdivision (d).

(i) (1) For purposes of this section, site-specific oversight costs include only the costs of the following activities, when carried out by the staff of a local agency or the local agency's authorized representative, that are either technical program staff or their immediate supervisors:

(A) Responsible party identification and notification.

(B) Site visits.

(C) Sampling activities.

(D) Meetings with responsible parties or responsible party consultants.

(E) Meetings with the regional board or with other affected agencies regarding a specific site.

(F) Review of reports, workplans, preliminary assessments, remedial action plans, or postremedial monitoring.

(G) Development of enforcement actions against a responsible party.

(H) Issuance of a closure document.

(2) The responsible party is liable for the site-specific oversight costs, calculated pursuant to paragraphs (3) and (4), incurred by a local agency, in overseeing any cleanup, abatement, or other action taken pursuant to this section to remedy an unauthorized release from an underground storage tank.

(3) Notwithstanding the requirements of any other provision of law, the amount of liability of a responsible party for the oversight costs incurred by the local agency and by the board and regional boards in overseeing any action pursuant to this section shall be calculated as an amount not more than 150 percent of the total amount of the site-specific oversight costs actually incurred by the local agency and shall not include the direct or indirect costs incurred by the board or regional boards.

(4) (A) The total amount of oversight costs for which a local agency may be reimbursed shall not exceed one hundred fifteen dollars ($115) per hour, multiplied by the total number of site-specific hours performed by the local agency.

(B) The total amount of the costs per site for administration and technical assistance to local agencies by the board and the regional board entering into agreements pursuant to subdivision (b) shall not exceed a combined total of thirty-five dollars ($35) for each hour of site-specific oversight. The board shall base its costs on the total hours of site-specific oversight work performed by all participating local agencies. The regional board shall base its costs on the total number of hours of site-specific oversight costs attributable to the local agency that received regional board assistance.

(C) The amounts specified in subparagraphs (A) and (B) are base rates for the 1990–91 fiscal year. Commencing July 1, 1991, and for each fiscal year thereafter, the board shall adjust the base rates annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the implicit price deflator for state and local government purchases of goods and services, as published by the United

States Department of Commerce or by a successor agency of the federal government.

(5) In recovering costs from responsible parties for costs incurred under this section, the local agency shall prorate any costs identifiable as startup costs over the expected number of cases that the local agency will oversee during a 10-year period. A responsible party who has been assessed startup costs for the cleanup of any unauthorized release that, as of January 1, 1991, is the subject of oversight by a local agency, shall receive an adjustment by the local agency in the form of a credit, for the purposes of cost recovery. Startup costs include all of the following expenses:

(A) Small tools, safety clothing, cameras, sampling equipment, and other similar articles necessary to investigate or document pollution.

(B) Office furniture.

(C) Staff assistance needed to develop computer tracking of financial and site-specific records.

(D) Training and setup costs for the first six months of the local agency program.

(6) This subdivision does not apply to costs that are required to be recovered pursuant to Article 7.5 (commencing with Section 25385) of Chapter 6.8.

(j) (1) Notwithstanding subdivisions (a) and (b), the board may enter into an agreement with a local agency and the Santa Clara Valley Water District to implement the local oversight program in Santa Clara County.

(2) Paragraph (1) shall remain operative only until June 30, 2005.

(3) The inoperation of paragraph (1) does not affect the validity of any action taken by the Santa Clara Valley Water District before June 30, 2005, and does not provide a defense for an owner, operator, or other responsible party who fails to comply with that action.

(k) If the board enters into an agreement with a local agency and the Santa Clara Valley Water District to implement the local oversight program in Santa Clara County, pursuant to subdivision (j), the board may provide funding to the Santa Clara Valley Water District pursuant to subdivision (d) of Section 25299.51 for oversight costs incurred by the district on and after July 1, 2002, to June 30, 2005.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances applicable only to the Santa Clara Valley Water District, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the health and safety of the citizens of Santa Clara County and the environment from contamination and the threat of contamination, and to continue local investigation and cleanup of groundwater pollution from unauthorized releases from petroleum underground storage tanks, it is necessary that this act take effect immediately.

CHAPTER 90

An act to amend Sections 4299 and 4376 of the Public Resources Code, relating to fire prevention.

[Approved by Governor June 30, 2004. Filed with Secretary of State July 1, 2004.]

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

SECTION 1. Section 4299 of the Public Resources Code is amended to read:

4299. A person who violates Section 4297 or 4298 is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than two thousand dollars ($2,000) or by imprisonment in the county jail for not less than 10 days nor more than 90 days or both the fine and imprisonment. All state and county law enforcement officers shall enforce orders of closure.

SEC. 2. Section 4376 of the Public Resources Code is amended to read:

4376. A person who maintains a solid waste facility in violation of this chapter is guilty of a misdemeanor, and shall be punished for a first conviction by a fine not to exceed five hundred dollars ($500), and, for a second or subsequent conviction within five years of a prior conviction of a violation of this chapter, by a fine not less than five hundred dollars ($500) or more than two thousand dollars ($2,000) or imprisonment in the county jail for a period not to exceed 30 days, or both that fine and imprisonment. Each and every day of violation is a separate and distinct offense.

CHAPTER 91

An act to add Title 12 (commencing with Section 1811) to Part 3 of the Code of Civil Procedure, and to add Section 12012.40 to, and to add

Article 6.5 (commencing with Section 63048.6) to Chapter 2 of Division 1 of Title 6.7 of, the Government Code, relating to tribal-state gaming compacts, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 2004. Filed with Secretary of State July 1, 2004.]

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

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

(a) The Governor is the designated state officer responsible for negotiating and executing, on behalf of the state, tribal-state gaming compacts with federally recognized Indian tribes located within the state pursuant to the federal Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701, et seq.) for the purpose of authorizing class III gaming, as defined in that act, on Indian lands within this state. The Governor has entered into amendments to certain tribal-state gaming compacts and has submitted a copy of those executed amendments to tribal-state compacts to both houses of the Legislature for ratification, and has submitted a copy of the executed amendments to the Secretary of State for purposes of subdivision (f) of Section 12012.25 of the Government Code.

(b) The amended tribal-state compacts, among other things, require payments to the state in anticipation of the issuance of bonds to be secured by those payments. It is in the public interest and a matter of urgency to authorize, and to implement as soon as possible, the sale of the right to receive those payments and a portion of certain other payments under the compacts, and the issuance of the bonds by the purchaser of the assets, in order to ensure that funds will be available for the purpose of funding essential transportation improvements and projects in the state.

SEC. 2. Title 12 (commencing with Section 1811) is added to Part 3 of the Code of Civil Procedure, to read:

TITLE 12. TRIBAL INJUNCTIONS

1811. (a) Following the issuance of the bonds as specified in Section 63048.65 of the Government Code and during the term of the bonds, if it reasonably appears that the exclusive right of an Indian tribe with a designated tribal compact, as defined in subdivision (b) of Section 63048.6 of the Government Code, pursuant to Section 3.2(a) of that compact has been violated, the tribe may seek a preliminary and permanent injunction against that gaming or the authorization of that

gaming as a substantial impairment of the rights specified in Section 3.2(a), in order to afford the tribe stability in its gaming operation and to maintain the bargained-for source of payment and security of the bonds. However, no remedy other than an injunction shall be available against the state or any of its political subdivisions for a violation of Section 3.2(a). The Legislature hereby finds and declares that any such violation of the exclusive right to gaming under Section 3.2(a) is a substantial impairment of the rights specified in that section and will cause irreparable harm that cannot be adequately remedied by damages. No undertaking shall be required on the part of the tribes in connection with any action to seek the preliminary or permanent injunction.

(b) Notwithstanding any other provision of law, the parties to an action brought pursuant to subdivision (a) may petition the Supreme Court for a writ of mandate from any order granting or denying a preliminary injunction. Any such petition shall be filed within 15 days following the notice of entry of the superior court order, and no extension of that period shall be allowed. In any case in which a petition has been filed within the time allowed therefor, the Supreme Court shall make any orders, as it may deem proper in the circumstances.

SEC. 3. Section 12012.40 is added to the Government Code, to read:

12012.40. (a) The following amendments to tribal-state gaming compacts 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.) are hereby ratified:

(1) The amendment of the compact between the State of California and the Pala Band of Mission Indians, executed on June 21, 2004.

(2) The amendment of the compact between the State of California and the Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, executed on June 21, 2004.

(3) The amendment of the compact between the State of California and the Rumsey Band of Wintun Indians, executed on June 21, 2004.

(4) The amendment of the compact between the State of California and the United Auburn Indian Community, executed on June 21, 2004.

(5) The amendment of the compact between the State of California and the Viejas Band of Kumeyaay Indians, executed on June 21, 2004.

(b) (1) In deference to tribal sovereignty, none of the following shall be deemed a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code):

(A) The execution of an amendment of tribal-state gaming compact ratified by this section.

(B) The execution of an intergovernmental agreement between a tribe and a county or city government negotiated pursuant to the express

authority of, or as expressly referenced in, an amended tribal-state gaming compact ratified by this section.

(C) The on-reservation impacts of compliance with the terms of an amended tribal-state gaming compact ratified by this section.

(D) The sale of compact assets as defined in subdivision (a) of Section 63048.6 or the creation of the special purpose trust established pursuant to Section 63048.65.

(2) Except as expressly provided herein, nothing in this subdivision shall be construed to exempt a city, county, or a city and county from the requirements of the California Environmental Quality Act.

SEC. 4. Article 6.5 (commencing with Section 63048.6) is added to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to read:

Article 6.5. Tribal Compact Assets Securitization

63048.6. The definitions contained in this section are in addition to the definitions contained in Section 63010 and together with the definitions contained in that section shall govern the construction of this article, unless the context requires otherwise:

(a) ''Compact assets'' means moneys required to be paid to the state under Sections 4.3.1 and 4.3.3 of the designated tribal compacts and the state's rights to receive those payments.

(b) ''Designated tribal compacts'' means the amended and new tribal-state compacts, which are ratified by the Legislature, and that, among other things, require certain payments to the state in exchange for the exclusive right of the compact tribes to engage in certain gaming activities in their respective core geographic markets, all as specified in the amended and new compacts, and that are designated by the Director of Finance pursuant to subdivision (a) of Section 63048.65.

(c) ''Operating expenses'' means the reasonable operating expenses of the special purpose trust and the bank, including, but not limited to, the costs of preparation of accounting and other reports, maintenance of the ratings on the bonds, insurance premiums, or other required activities of the special purpose trust, and fees and expenses incurred for professional consultants, advisors, fiduciaries, and legal counsel, including the fees and expenses of the Attorney General incurred in connection with the enforcement of the pledges and agreements of the state pursuant to Section 63048.8.

63048.65. (a) Upon a filing by the Director of Finance with the bank of a list of designated tribal compacts and the specific portions of the compact assets to be sold, the bank may sell for, and on behalf of, the state, solely as its agent, those specific portions of the compact assets to a special purpose trust. To that end, a special purpose trust is hereby established as a not-for-profit corporation solely for that purpose and for

the purposes necessarily incidental thereto. The bank may enter into one or more sales agreements with the special purpose trust on terms it deems appropriate, which may include covenants of, and binding on, the state necessary to establish and maintain the security of the bonds and exemption of interest on the bonds from federal income taxation. The portion of the compact assets to be sold shall be an amount or amounts determined by the Director of Finance that are necessary to provide the state with net proceeds of the sale, not to exceed one billion five hundred million dollars ($1,500,000,000), exclusive of capitalized interest on the bonds and any costs incurred by the bank or the special purpose trust in implementing this article, including, but not limited to, the cost of financing one or more reserve funds, any credit enhancements, costs incurred in the issuance of bonds, and operating expenses. Those specific portions of the compact assets may be sold at one time or from time to time.

(b) The special purpose trust may issue bonds, including, but not limited to, refunding bonds, on the terms it shall determine, and do all things contemplated by, and authorized by, this division with respect to the bank, and enjoy all rights, privileges, and immunities the bank enjoys pursuant to this division, or as authorized by Section 5140 of the Corporations Code with respect to public benefit nonprofit corporations, or as necessary or appropriate in connection with the issuance of bonds, and may enter into agreements with any public or private entity and pledge the compact assets that it purchased as collateral and security for its bonds. However, to the extent of any conflict between any of the foregoing and the provisions of this article, the provisions of this article shall control. The pledge of any of these assets and of any revenues, reserves, and earnings pledged in connection with these assets shall be valid and binding in accordance with its terms from the time the pledge is made, and amounts so pledged and thereafter received shall immediately be subject to the lien of the pledge without the need for physical delivery, recordation, filing, or other further act. The special purpose trust, and its assets and income, and bonds issued by the special purpose trust, and their transfer and the income therefrom, shall be exempt from all taxation by the state and by its political subdivisions.

(c) (1) The net proceeds of the sale of compact assets by the bank shall be deposited in the following order:

(A) One billion two hundred fourteen million dollars ($1,214,000,000) to the Traffic Congestion Relief Fund for the purpose of funding or reimbursing the cost of projects, programs, and activities permitted and necessary to be funded by that fund in accordance with applicable law in the following priority order:

(i) Transfer of four hundred fifty-seven million dollars ($457,000,000) to the State Highway Account for project expenditures.

(ii) Two hundred ninety million dollars ($290,000,000) for allocation to Traffic Congestion Relief Program projects.

(iii) Three hundred eighty-four million dollars ($384,000,000) to be allocated equally, as funds become available, for both of the following:

(I) To the Public Transportation Account for project expenditures.

(II) For advanced repayments of local street and road projects due for funding in the 2008–09 fiscal year.

(iv) Eighty-three million dollars ($83,000,000) to the Public Transportation Account for project expenditures.

(v) Advanced funding of State Transit Assistance loans due for funding in the 2008–09 fiscal year.

(B) To the Transportation Deferred Investment Fund, an amount up to the outstanding amount of the suspension of the 2004–05 fiscal year transfer of the sales tax on gasoline to the Transportation Investment Fund pursuant to requirements of Article XIX B of the California Constitution.

(C) To the Transportation Deferred Investment Fund, an amount up to the outstanding amount of the suspension of the 2003–04 fiscal year transfer of the sales tax on gasoline to the Transportation Investment Fund pursuant to requirements of Article XIX B of the California Constitution.

(2) Notwithstanding paragraph (1), if and to the extent it is necessary to ensure to the maximum extent practicable the eligibility for exclusion from taxation under the federal Internal Revenue Code of interest on the bonds to be issued by the special purpose trust, the Director of Finance may adjust the application of proceeds not eligible for exclusion from taxation among the authorized funds described in paragraph (1). The Department of Finance shall submit a report to the Legislature describing any proposed changes among the authorized funds in paragraph (1), and consistent with this paragraph, at least 30 days prior to issuing the bonds pursuant to this article. Amounts deposited in the Traffic Congestion Relief Fund pursuant to paragraph (1) shall be applied as a credit to transfers from the General Fund that the Controller would otherwise be required to make to that fund. Amounts deposited in the Transportation Deferred Investment Fund shall be expended in conformance with Sections 7105 and 7106 of the Revenue and Taxation Code, and the amounts so deposited shall also be applied as a credit to the transfers from the General Fund that the Controller would otherwise be required to make under those sections. The Legislature hereby finds and declares that the deposits and credits described in this subdivision do not constitute the use of the proceeds of bonds or other indebtedness to pay a year-end state budget deficit as prohibited by subdivision (c) of Section 1.3 of Article XVI of the California Constitution. Subject to any constitutional limitation, the use and application of the proceeds of any

sale of compact assets or bonds shall not in any way affect the legality or validity of that sale or those bonds.

(d) Funds received from amended tribal-state compacts, or new compacts entered into and ratified on or after the effective date of this article, pursuant to Section 4.3.1 of the amended compacts, or the comparable section in new compacts, as specified in those compacts, that are neither sold to the special purpose trust nor otherwise appropriated, and funds received as a result of the state's acquisition of an ownership interest in any residual interest in compact assets attributable to Section 4.3.1 of the amended compacts, or the comparable section in new compacts, as specified in those compacts, shall be remitted to the California Gambling Control Commission for deposit in the General Fund.

(e) Funds received from amended tribal-state compacts, or new compacts entered into and ratified on or after the effective date of this article, pursuant to Section 4.3.3 of the amended compacts, or the comparable section in new compacts, as specified in those compacts, shall be held in an account within the Special Deposit Fund until those funds are sold or otherwise applied pursuant to this subdivision. From time to time, at the direction of the Director of Finance, any moneys in this account shall be deposited and applied in accordance with subdivision (c) or shall be deemed to be compact assets for purposes of sale to the special purpose trust pursuant to this article. If the Director of Finance determines that the bonds authorized pursuant to this article cannot be successfully issued by the special purpose trust, funds within the account shall be deposited in accordance with subdivision (c). In addition, all subsequent revenues remitted pursuant to Section 4.3.3 of the amended compacts, or the comparable section in new compacts, as specified in those compacts, and funds received as a result of the state's acquisition of an ownership interest in any residual interest in compact assets attributable to Section 4.3.3 of the amended compacts, or the comparable section in new compacts, as specified in those compacts, shall be used to satisfy the purposes of subdivision (c). When the amounts described in subdivision (c) have been paid to the funds named in that subdivision either pursuant to this article or by other appropriations or transfers, thereafter the revenues received by the state from Section 4.3.3 of the compact shall be remitted to the California Gambling Control Commission for deposit in the General Fund.

(f) The principal office of the special purpose trust shall be located in the County of Sacramento. The articles of incorporation of the special purpose trust shall be prepared and filed, on behalf of the state, with the Secretary of State by the bank. The members of the board of directors of the bank as of the effective date of this article, the Director of the Department of Transportation, and the Director of General Services,

shall each serve ex officio as the directors of the special purpose trust. Any of these directors may name a designee to act on his or her behalf as a director of the special purpose trust. The Director of Finance or his or her designee shall serve as chair of the special purpose trust. Directors of the special purpose trust shall not be subject to personal liability for carrying out the powers and duties conferred by this article. The Legislature hereby finds and declares that the duties and responsibilities of the directors of the special purpose trust and the duties and responsibilities of the Director of Finance established under this article are within the scope of the primary duties of those persons in their official capacities. The special purpose trust shall be treated as a separate legal entity with its separate corporate purpose as described in this article, and the assets, liabilities, and funds of the special purpose trust shall be neither consolidated nor commingled with those of the bank.

63048.7. Notwithstanding any other provision of this division, Article 3 (commencing with Section 63040), Article 4 (commencing with Section 63042), and Article 5 (commencing with Section 63043) do not apply to any bonds issued by the special purpose trust established by this article. All matters authorized in this article are in addition to powers granted to the bank in this division.

63048.75. Any sale of some or all of the compact assets under this article shall be treated as a true sale and absolute transfer of the property so transferred to the special purpose trust and not as a pledge or grant of a security interest by the state, the bank board, or the bank for any borrowing. The characterization of the sale of any of those assets as an absolute transfer by the participants shall not be negated or adversely affected by the fact that only a portion of the compact assets is transferred, nor by the state's acquisition of an ownership interest in any residual interest in the compact assets, nor by any characterization of the special purpose trust or its bonds for purposes of accounting, taxation, or securities regulation, nor by any other factor whatsoever.

63048.8. (a) (1) On and after the effective date of each sale of compact assets, the state shall have no right, title, or interest in or to the compact assets sold, and the compact assets so sold shall be property of the special purpose trust and not of the state, the bank board, or the bank, and shall be owned, received, held, and disbursed by the special purpose trust or the trustee for the financing. None of the compact assets sold by the state pursuant to this article shall be subject to garnishment, levy, execution, attachment, or other process, writ, including, but not limited to, a writ of mandate, or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the state, the bank board, or the bank.

(2) On or before the effective date of any sale, the state, acting through the Director of Finance, upon direction of the bank, shall notify each

tribe that has executed a designated tribal compact that the particular compact assets that have been sold to the special purpose trust and irrevocably instruct the tribe that, as of the applicable effective date and so long as the bonds secured by the compact assets are outstanding, the compact assets sold are to be paid directly to the trustee for the applicable bonds of the special purpose trust. Certification by the Director of Finance that this notice has been given shall be conclusive evidence thereof for purposes of this article.

(3) The state pledges and agrees with the holders of any bonds issued by the special purpose trust that it will not authorize anyone other than an Indian tribe with a federally authorized compact to engage in specified gaming activities within the defined core geographic market of an Indian tribe that is a party to a designated tribal compact in violation of the designated tribal compact as ratified by the Legislature, unless adequate provision is made by law for the protection of the holders of bonds in a manner consistent with the indenture or trust agreement pursuant to which the bonds are issued. The state pledges to and agrees with the holders of any bonds issued by the special purpose trust that it will (A) enforce its rights to collect the compact assets sold to the special purpose trust pursuant to this article, (B) not amend any designated tribal compact or take any other action, that would in any way diminish, limit, or impair the rights to receive compact assets sold to the special purpose trust pursuant to this article, and (C) not in any way impair the rights and remedies of bondholders or the security for their bonds until, in each case, those bonds, together with the interest thereon and costs and expenses in connection with any action or proceeding on behalf of the bondholders, are fully paid and discharged or otherwise provided for pursuant to the terms of the indenture or trust agreement pursuant to which those bonds are issued. The special purpose trust may include these pledges and undertakings in its bonds. Notwithstanding any other provision of this article, inherent police powers that cannot be contracted away are reserved to the state.

(b) Bonds issued pursuant to this article shall not be deemed to constitute a debt of the state nor a pledge of the faith or credit of the state, and all bonds shall contain on the face of the bond a statement to the effect that neither the faith and credit nor the taxing power nor any other assets or revenues of the state or of any political subdivision of the state other than the special purpose trust, is or shall be pledged to the payment of the principal of or the interest on the bonds.

(c) Whether or not the bonds are of a form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds are hereby made negotiable instruments for all purposes, subject only to the provisions of the bonds for registration.

(d) The special purpose trust and the bank shall be treated as public agencies for purposes of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, and any action or proceeding challenging the validity of any matter authorized by this article shall be brought in accordance with, and within the time specified in, that chapter.

(e) Notwithstanding any other provision of law, the exclusive means to obtain review of a superior court judgment entered in an action brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any bonds to be issued, any other contracts to be entered into, or any other matters authorized by this article shall be by petition to the Supreme Court for writ of review. Any such petition shall be filed within 15 days following the notice of entry of the superior court judgment, and no extension of that period shall be allowed. If no petition is filed within the time allowed for this purpose, or the petition is denied, with or without opinion, the decision of the superior court shall be final and enforceable as provided in subdivision (a) of Section 870 of the Code of Civil Procedure. In any case in which a petition has been filed within the time allowed, the Supreme Court shall make any orders as it may deem proper in the circumstances. If no answering party appeared in the superior court action, the only issues that may be raised in the petition are those related to the jurisdiction of the superior court. Nothing in this subdivision or subdivision (d) shall be construed as granting standing to challenge the designated tribal compacts.

63048.85. (a) The Legislature finds and declares that, because the proceeds from the sale of compact assets authorized by this article are not ''proceeds of taxes'' as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

(b) Compact assets shall not be deemed to be ''State General Fund proceeds of taxes appropriated pursuant to Article XIII B'' within the meaning of Section 8 of Article XVI of the California Constitution, Section 41202 of the Education Code, or any other provision of law.

(c) Compact assets are not General Fund revenues for the purposes of Section 8 of Article XVI of the California Constitution or any other provision of law.

63048.9. This article and all powers granted hereby shall be liberally construed to effectuate its intent and their purposes.

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

In order to ensure that sufficient funds are available when needed to fund essential transportation programs and to ensure that the revenues available under the amended tribal-state compacts ratified pursuant to this act are made available to the state as expeditiously as possible, it is necessary that this act take effect immediately.

CHAPTER 92

An act to amend Section 4702 of the Labor Code, relating to workers' compensation.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 4702 of the Labor Code is amended to read:

4702. (a) Except as otherwise provided in this section and Sections 4553, 4554, 4557, and 4558, the death benefit in cases of total dependency shall be as follows:

(1) In the case of two total dependents and regardless of the number of partial dependents, for injuries occurring before January 1, 1991, ninety-five thousand dollars ($95,000), for injuries occurring on or after January 1, 1991, one hundred fifteen thousand dollars ($115,000), for injuries occurring on or after July 1, 1994, one hundred thirty-five thousand dollars ($135,000), for injuries occurring on or after July 1, 1996, one hundred forty-five thousand dollars ($145,000), and for injuries occurring on or after January 1, 2006, two hundred ninety thousand dollars ($290,000).

(2) In the case of one total dependent and one or more partial dependents, for injuries occurring before January 1, 1991, seventy thousand dollars ($70,000), for injuries occurring on or after January 1, 1991, ninety-five thousand dollars ($95,000), for injuries occurring on or after July 1, 1994, one hundred fifteen thousand dollars ($115,000), for injuries occurring on or after July 1, 1996, one hundred twenty-five thousand dollars ($125,000), and for injuries occurring on or after January 1, 2006, two hundred fifty thousand dollars ($250,000), plus four times the amount annually devoted to the support of the partial dependents, but not more than the following: for injuries occurring before January 1, 1991, a total of ninety-five thousand dollars ($95,000), for injuries occurring on or after January 1, 1991, one hundred fifteen thousand dollars ($115,000), for injuries occurring on or after July 1, 1994, one hundred twenty-five thousand dollars ($125,000), for injuries

occurring on or after July 1, 1996, one hundred forty-five thousand dollars ($145,000), and for injuries occurring on or after January 1, 2006, two hundred ninety thousand dollars ($290,000).

(3) In the case of one total dependent and no partial dependents, for injuries occurring before January 1, 1991, seventy thousand dollars ($70,000), for injuries occurring on or after January 1, 1991, ninety-five thousand dollars ($95,000), for injuries occurring on or after July 1, 1994, one hundred fifteen thousand dollars ($115,000), for injuries occurring on or after July 1, 1996, one hundred twenty-five thousand dollars ($125,000), and for injuries occurring on or after January 1, 2006, two hundred fifty thousand dollars ($250,000).

(4) (A) In the case of no total dependents and one or more partial dependents, for injuries occurring before January 1, 1991, four times the amount annually devoted to the support of the partial dependents, but not more than seventy thousand dollars ($70,000), for injuries occurring on or after January 1, 1991, a total of ninety-five thousand dollars ($95,000), for injuries occurring on or after July 1, 1994, one hundred fifteen thousand dollars ($115,000), and for injuries occurring on or after July 1, 1996, but before January 1, 2006, one hundred twenty-five thousand dollars ($125,000).

(B) In the case of no total dependents and one or more partial dependents, eight times the amount annually devoted to the support of the partial dependents, for injuries occurring on or after January 1, 2006, but not more than two hundred fifty thousand dollars ($250,000).

(5) In the case of three or more total dependents and regardless of the number of partial dependents, one hundred fifty thousand dollars ($150,000), for injuries occurring on or after July 1, 1994, one hundred sixty thousand dollars ($160,000), for injuries occurring on or after July 1, 1996, and three hundred twenty thousand dollars ($320,000), for injuries occurring on or after January 1, 2006.

(6) (A) In the case of a police officer who has no total dependents and no partial dependents, for injuries occurring on or after January 1, 2003, and prior to January 1, 2004, two hundred fifty thousand dollars ($250,000) to the estate of the deceased police officer.

(B) For injuries occurring on or after January 1, 2004, in the case of no total dependents and no partial dependents, two hundred fifty thousand dollars ($250,000) to the estate of the deceased employee.

(b) A death benefit in all cases shall be paid in installments in the same manner and amounts as temporary total disability indemnity would have to be made to the employee, unless the appeals board otherwise orders. However, no payment shall be made at a weekly rate of less than two hundred twenty-four dollars ($224).

(c) Disability indemnity shall not be deducted from the death benefit and shall be paid in addition to the death benefit when the injury resulting in death occurs after September 30, 1949.

(d) All rights under this section existing prior to January 1, 1990, shall be continued in force.

SEC. 2. It is the intent of the Legislature that the amendment to Section 4702 of the Labor Code made by this act shall have retroactive effect.

CHAPTER 93

An act to amend Section 1871.3 of the Insurance Code, relating to insurance claims.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 1871.3 of the Insurance Code is amended to read:

1871.3. (a) In the case of any claim arising from the theft of an insured vehicle, prior to the settlement of the claim, the insurer shall secure from the insured a claim form which shall contain, among other things, the following:

(1) A warning that false representations made on the signed claim form by the insured subject the insured to a penalty of perjury.

(2) A detailed description of the insured vehicle including the interior, exterior, and any special equipment.

(3) The purchase location of the insured vehicle, the purchase date, and the name of the seller.

(4) A detailed statement of the circumstances surrounding the theft.

(5) The current driver's license number of the insured, except where the vehicle is owned by a person that is not a natural person, or the claimant is a financial institution and the vehicle is insured pursuant to an insurance policy issued to the financial institution to protect vehicles that are collateral securing any loan made by the financial institution. A financial institution shall provide, to the extent it has the information, the current driver's license number of the registered owner of the vehicle or the debtor who has obtained the loan.

(b) For purposes of complying with the requirements of subdivision (a), the insured shall do either of the following:

(1) Sign the claim form in the presence of the insurance agent, broker, adjuster, or other claims representative, who shall verify the driver's license number of the insured who is signing the claim form.

(2) Submit a claim form with a notarized signature.

(c) The claim form shall be signed under penalty of perjury.

(d) The insurer shall retain the following for at least three years:

(1) All settlement checks in settlement of the theft of an automobile, or an electronic copy thereof.

(2) The original claim form provided for in subdivision (a), or an electronic copy thereof.

(3) A legible copy of the police report of the vehicle theft, or an electronic copy thereof.

CHAPTER 94

An act to amend Section 50078.1 of the Government Code, relating to fire suppression.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 50078.1 of the Government Code is amended to read:

50078.1. As used in this article:

(a) ''Legislative body'' means the board of directors, trustees, governors, or any other governing body of a local agency specified in subdivision (b).

(b) ''Local agency'' means any city, county, or city and county, whether general law or chartered, or special district, including a county service area created pursuant to the County Service Area Law, Chapter 2.2 (commencing with Section 25210.1) of Part 2 of Division 2 of Title 3.

(c) ''Fire suppression'' includes firefighting and fire prevention, including, but not limited to, vegetation removal or management undertaken, in whole or in part, for the reduction of a fire hazard.

(d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 95

An act to amend, repeal, and add Section 1764.1 of the Insurance Code, relating to surplus line brokers.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 1764.1 of the Insurance Code is amended to read:

1764.1. (a) (1) Every nonadmitted insurer, in the case of insurance to be purchased by a resident of this state pursuant to Section 1760, and surplus line broker, in the case of any insurance with a nonadmitted carrier to be transacted by the surplus line broker, shall be responsible to ensure that, at the time of accepting an application for any insurance policy, other than a renewal of that policy, issued by a nonadmitted insurer, the signature of the applicant on the disclosure statement set forth in subdivision (b) is obtained. In fulfillment of this responsibility, the nonadmitted insurer and the surplus line broker may rely, if it is reasonable under all the circumstances to do so, on the disclosure statement received from any licensee involved in the transaction as prima facie evidence that the disclosure statement and appropriate signature from the applicant have been obtained. The surplus line broker shall maintain a copy of the signed disclosure statement in his or her records for a period of at least five years. These records shall be made available to the commissioner and the insured upon request. This disclosure shall be signed by the applicant, and is not subject to any limited power of attorney agreement between the applicant and an agent or broker, or a surplus line broker. The disclosure statement shall be in boldface 16-point type on a freestanding document. In addition, every policy issued by a nonadmitted insurer and every certificate evidencing the placement of insurance shall contain, or have affixed to it by the insurer or surplus line broker, the disclosure statement set forth in subdivision (b) in boldface 16-point type on the front page of the policy.

(2) In any case where the applicant has not received and completed the signed disclosure form required by this section, he or she may cancel the insurance so placed. The cancellation shall be on a pro rata basis as to premium, and the applicant shall be entitled to the return of any broker's fees charged for the placement.

(b) The following notice shall be provided to policyholders and applicants for insurance as provided by subdivision (a), and shall be printed in English and in the language principally used by the surplus line broker and nonadmitted insurer to advertise, solicit, or negotiate the

sale and purchase of surplus line insurance. The surplus line broker and nonadmitted insurer shall use the appropriate bracketed language for application and issued policy disclosures:

"NOTICE:

1. THE INSURANCE POLICY THAT YOU [HAVE PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINE" INSURERS.

2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED INSURERS.

3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

4. CALIFORNIA MAINTAINS A LIST OF ELIGIBLE SURPLUS LINE INSURERS APPROVED BY THE INSURANCE COMMISSIONER. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST.

5. FOR ADDITIONAL INFORMATION ABOUT THE INSURER YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINE" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE, AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: ____.

6. IF YOU, AS THE APPLICANT, REQUIRED THAT THE INSURANCE POLICY YOU HAVE PURCHASED BE BOUND IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE WITHIN TWO BUSINESS DAYS, AND YOU DID NOT RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS POLICY WITHIN FIVE DAYS OF RECEIVING THIS DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM WILL BE PRORATED AND ANY BROKER FEE CHARGED FOR THIS INSURANCE WILL BE RETURNED TO YOU."

(c) When a contract is issued to an industrial insured neither the nonadmitted insurer nor the surplus line broker is required to provide the notice required in this section except on the confirmation of insurance, the certificate of placement, or the policy, whichever is first provided to the insured, nor is the insurer or surplus line broker required to obtain the insured's signature. The producer shall ensure that the notice affixed to the confirmation of insurance, certificate of placement, or the policy is provided to the insured. The producer shall insert the current toll-free telephone number of the Department of Insurance as provided in paragraph 4 of the notice.

(1) An industrial insured is an insured:

(A) Which employs at least 25 employees on average during the prior 12 months; and

(B) Which has aggregate annual premiums for insurance for all risks other than workers' compensation and health coverage totaling no less than twenty-five thousand dollars ($25,000); or

(C) Which obtains insurance through the services of a full-time employee acting as an insurance manager or a continuously retained insurance consultant. A ''continuously retained insurance consultant'' does not include: (i) Any agent or broker through whom the insurance is being placed, (ii) any subagent or subproducer involved in the transaction, or (iii) any agent or broker which is a business organization employing or contracting with any person mentioned in clauses (i) and (ii).

(2) The surplus line broker shall be responsible to ensure that the applicant is an industrial insured. A surplus line broker who reasonably relies on information provided in good faith by the applicant, whether directly or through the producer, shall be deemed to be in compliance with this requirement.

(d) For purposes of compliance with the requirement of subdivision (a) that the signature of the applicant be obtained, the following shall apply:

(1) Where the insurance transaction is not conducted at an in-person, face-to-face meeting, the applicant's signature on the disclosure form may be transmitted by the applicant to the agent or broker via facsimile or comparable electronic transmittal.

(2) In the case of commercial lines coverage, or personal insurance coverage subject to Section 675 and any umbrella coverage associated therewith, where an applicant requires that insurance coverage be bound immediately, either because existing coverage will lapse within two business days of the time the insurance is bound or because the applicant is required to have coverage in place within two business days, and the applicant cannot meet in person with the agent or broker to sign the disclosure form, the agent or broker may obtain the signature of the

applicant within five days of binding coverage, provided that the applicant may cancel the insurance so placed within five days of receiving the disclosure form from the agent or broker. The cancellation shall be on a pro rata basis, and the applicant shall be entitled to the rescission or return of any broker's fees charged for the placement. When a policy is cancelled, the broker shall inform the applicant that the broker fee must be returned and that the premium must be prorated.

(e) Notwithstanding subdivision (a), this section shall not apply to insurance issued or delivered in this state by a nonadmitted Mexican insurer by and through a surplus line broker affording coverage exclusively in the Republic of Mexico on property located temporarily or permanently in, or operations conducted temporarily or permanently within, the Republic of Mexico.

(f) This section shall remain in effect until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 2. Section 1764.1 is added to the Insurance Code, to read:

1764.1. (a) (1) Every nonadmitted insurer, in the case of insurance to be purchased by a resident of this state pursuant to Section 1760, and surplus line broker, in the case of any insurance with a nonadmitted carrier to be transacted by the surplus line broker, shall be responsible to ensure that, at the time of accepting an application for any insurance policy, other than a renewal of that policy, issued by a nonadmitted insurer, the signature of the applicant on the disclosure statement set forth in subdivision (b) is obtained. In fulfillment of this responsibility, the nonadmitted insurer and the surplus line broker may rely, if it is reasonable under all the circumstances to do so, on the disclosure statement received from any licensee involved in the transaction as prima facie evidence that the disclosure statement and appropriate signature from the applicant have been obtained. The surplus line broker shall maintain a copy of the signed disclosure statement in his or her records for a period of at least five years. These records shall be made available to the commissioner and the insured upon request. This disclosure shall be signed by the applicant, and is not subject to any limited power of attorney agreement between the applicant and an agent or broker, or a surplus line broker. The disclosure statement shall be in boldface 16-point type on a freestanding document. In addition, every policy issued by a nonadmitted insurer and every certificate evidencing the placement of insurance shall contain, or have affixed to it by the insurer or surplus line broker, the disclosure statement set forth in subdivision (b) in boldface 16-point type on the front page of the policy.

(2) In any case where the applicant has not received and completed the signed disclosure form required by this section, he or she may cancel the insurance so placed. The cancellation shall be on a pro rata basis as

to premium, and the applicant shall be entitled to the return of any broker's fees charged for the placement.

(b) The following notice shall be provided to policyholders and applicants for insurance as provided by subdivision (a), and shall be printed in English and in the language principally used by the surplus line broker and nonadmitted insurer to advertise, solicit, or negotiate the sale and purchase of surplus line insurance. The surplus line broker and nonadmitted insurer shall use the appropriate bracketed language for application and issued policy disclosures:

"NOTICE:

1. THE INSURANCE POLICY THAT YOU (HAVE PURCHASED) (ARE APPLYING TO PURCHASE) IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINE" INSURERS.

2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED INSURERS.

3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

4. CALIFORNIA MAINTAINS A LIST OF ELIGIBLE SURPLUS LINE INSURERS APPROVED BY THE INSURANCE COMMISSIONER. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST.

5. FOR ADDITIONAL INFORMATION ABOUT THE INSURER YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINE" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE, AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: ____."

(c) When a contract is issued to an industrial insured neither the nonadmitted insurer nor the surplus line broker is required to provide the notice required in this section except on the confirmation of insurance, the certificate of placement, or the policy, whichever is first provided to the insured, nor is the insurer or surplus line broker required to obtain the insured's signature. The producer shall ensure that the notice affixed to the confirmation of insurance, certificate of placement, or the policy

is provided to the insured. The producer shall insert the current toll-free telephone number of the Department of Insurance as provided in paragraph 4 of the notice.

(1) An industrial insured is an insured:

(A) Which employs at least 25 employees on average during the prior 12 months; and

(B) Which has aggregate annual premiums for insurance for all risks other than workers' compensation and health coverage totaling no less than twenty-five thousand dollars ($25,000); or

(C) Which obtains insurance through the services of a full-time employee acting as an insurance manager or a continuously retained insurance consultant. A ''continuously retained insurance consultant'' does not include: (i) Any agent or broker through whom the insurance is being placed, (ii) any subagent or subproducer involved in the transaction, or (iii) any agent or broker which is a business organization employing or contracting with any person mentioned in clauses (i) and (ii).

(2) The surplus line broker shall be responsible to ensure that the applicant is an industrial insured. A surplus line broker who reasonably relies on information provided in good faith by the applicant, whether directly or through the producer, shall be deemed to be in compliance with this requirement.

(d) For purposes of compliance with the requirement of subdivision (a) that the signature of the applicant be obtained, the following shall apply:

(1) Where the insurance transaction is not conducted at an in-person, face-to-face meeting, the applicant's signature on the disclosure form may be transmitted by the applicant to the agent or broker via facsimile or comparable electronic transmittal.

(2) In the case of commercial insurance coverages, where an applicant requires that insurance coverage be bound immediately, either because existing coverage will lapse within two business days of the time the insurance is bound or because the applicant is required to have coverage in place within two business days, and the applicant cannot meet in person with the agent or broker to sign the disclosure form, the agent or broker may obtain the signature of the applicant within five days of binding coverage, provided that the applicant may cancel the insurance so placed within five days of receiving the disclosure form from the agent or broker. The cancellation shall be on a pro rata basis, and the applicant shall be entitled to the rescission or return of any broker's fees charged for the placement.

(e) Notwithstanding subdivision (a), this section shall not apply to insurance issued or delivered in this state by a nonadmitted Mexican insurer by and through a surplus line broker affording coverage

exclusively in the Republic of Mexico on property located temporarily or permanently in, or operations conducted temporarily or permanently within, the Republic of Mexico.

(f) This section shall become operative on January 1, 2008.

CHAPTER 96

An act to amend Section 56375.3 of the Government Code, relating to annexation.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 56375.3 of the Government Code is amended to read:

56375.3. (a) In addition to those powers enumerated in Section 56375, a commission shall do either of the following:

(1) Approve, after notice and hearing, the annexation to a city, and waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely, if all of the following are true:

(A) The annexation is initiated on or after January 1, 2000, and before January 1, 2007.

(B) The annexation is proposed by resolution adopted by the affected city.

(C) The commission finds that the territory contained in the annexation proposal meets all of the requirements set forth in subdivision (b).

(2) Approve, after notice and hearing, the annexation to a city, subject to subdivision (a) of Section 57080, if all of the following are true:

(A) The annexation is initiated on or after January 1, 2007.

(B) The annexation is proposed by resolution adopted by the affected city.

(C) The commission finds that the territory contained in the annexation proposal meets all of the requirements set forth in subdivision (b).

(b) Subdivision (a) applies to territory that meets all of the following requirements:

(1) It does not exceed 150 acres in area, and that area constitutes the entire island.

(2) The territory constitutes an entire unincorporated island located within the limits of a city, or constitutes a reorganization containing a number of individual unincorporated islands.

(3) It is surrounded in either of the following ways:

(A) Surrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean.

(B) Surrounded by the city to which annexation is proposed and adjacent cities.

(C) This subdivision shall not be construed to apply to any unincorporated island within a city that is a gated community where services are currently provided by a community services district.

(D) Notwithstanding any other provision of law, at the option of either the city or the county, a separate property tax transfer agreement may be agreed to between a city and a county pursuant to Section 99 of the Revenue and Taxation Code regarding an annexation subject to this subdivision without affecting any existing master tax sharing agreement between the city and county.

(4) It is substantially developed or developing. The finding required by this subparagraph shall be based upon one or more factors, including, but not limited to, any of the following factors:

(A) The availability of public utility services.

(B) The presence of public improvements.

(C) The presence of physical improvements upon the parcel or parcels within the area.

(5) It is not prime agricultural land, as defined by Section 56064.

(6) It will benefit from the annexation or is receiving benefits from the annexing city.

(c) Notwithstanding any other provision of this subdivision, this subdivision shall not apply to all or any part of that portion of the development project area referenced in subdivision (e) of Section 33492.41 of the Health and Safety Code that as of January 1, 2000, meets all of the following requirements:

(1) Is unincorporated territory.

(2) Contains at least 100 acres.

(3) Is surrounded or substantially surrounded by incorporated territory.

(4) Contains at least 100 acres zoned for commercial or industrial uses or is designated on the applicable county general plan for commercial or industrial uses.

CHAPTER 97

An act to add Article 8.5 (commencing with Section 53880) to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, relating to assessments.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Article 8.5 (commencing with Section 53880) is added to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 8.5. Notification of Subordinate Interests

53880. Notwithstanding any other provision of law, before a water district, as defined in Section 20200 of the Water Code, takes an action that will terminate another party's interest in real property as the means of collecting or enforcing delinquent assessments, fees, charges, or other levies, the district shall make a reasonable effort to ascertain the names and addresses of each holder of an interest in the delinquent property that would be terminated by the district. The district shall then provide each interest holder not less than 45 days' notice, by certified mail, at that party's last known address, of the intent of the district to take action that would terminate the party's interest in the delinquent property.

53881. For purposes of this article, a district shall be deemed to have made a reasonable effort to ascertain the names and addresses of each party holding an interest in delinquent property if it obtains a title guarantee, lot book guarantee, or similar guarantee from a title company, or searches the official records of the county in which the delinquent property is located. The cost of ascertaining the names and addresses of each party, including without limitation, the costs of any guarantees obtained from title companies, shall be added to the amount of the delinquency that shall be paid in order to cure the delinquency or redeem the delinquent property, or both.

53882. A district that complies with this article shall not be deemed to have denied any party to which notice is required to be given by this article, due process in connection with the termination of that party's interest in the delinquent property resulting from the action of the district as to which notice was provided. A district required by other statutes governing that district to provide notice to each holder of an interest in delinquent property that would be terminated by virtue of an action by the district taken as the means of collecting or enforcing delinquent

assessments, fees, charges, or other levies, shall be deemed to have complied with those statutes if notice is provided in accordance with this article.

53883. This article applies only to requirements to give notice to third parties and not to existing statutory requirements to give notice to the owner of the real property as shown on the most recent assessment roll.

CHAPTER 98

An act to amend Section 8020 of the Elections Code, relating to elections.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 8020 of the Elections Code is amended to read:

8020. (a) No candidate's name shall be printed on the ballot to be used at the direct primary unless the following nomination documents are delivered for filing to the county elections official:

(1) Declaration of candidacy pursuant to Section 8040.

(2) Nomination papers signed by signers pursuant to Section 8041.

(b) The forms shall first be available on the 113th day prior to the direct primary election and shall be delivered not later than 5 p.m. on the 88th day prior to the direct primary. The forms may be delivered to the county elections official by a person other than the candidate.

(c) Upon the receipt of an executed nomination document, the county elections official shall give the person delivering the document a receipt, properly dated, indicating that the document was delivered to the county elections official.

(d) Notwithstanding Section 8028, upon request of a candidate, the county elections official shall provide the candidate with a declaration of candidacy. The county elections official shall not require a candidate to sign, file, or sign and file, a declaration of candidacy as a condition of receiving nomination papers.

CHAPTER 99

An act to amend Section 19641.2 of the Business and Professions Code, relating to horse racing.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 19641.2 of the Business and Professions Code is amended to read:

19641.2. (a) The nonprofit foundation authorized to receive funds pursuant to Section 19641 shall use those funds to administer a health and welfare trust fund without prejudice and for the benefit of every eligible person. The officers and directors of the health and welfare trust fund shall have a fiduciary responsibility to manage the fund for the benefit of the beneficiaries.

(b) Every employer of backstretch workers shall, upon request, submit in writing or electronically to the administrator of the welfare program for backstretch workers any employment records necessary for prompt payment of benefits and proper administration of the program. Upon request, employers shall also provide to the administrator access to any employment records necessary for prompt payment of benefits and proper administration of the program.

(c) At least one member of the health and welfare fund board shall be a member without financial interest in the horse racing industry appointed from a list of nominees submitted jointly by the California State Council of the Service Employees International Union, the Jockey's Guild, and the California Teamsters Public Affairs Council.

(d) Nothing in this section is intended to affect the status of the welfare fund as a charity under Section 501(c)(3) of the federal Internal Revenue Code or it compliance with the Charitable Purposes Act (Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code).

CHAPTER 100

An act to amend Section 3209.10 of the Labor Code, relating to workers' compensation.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 3209.10 of the Labor Code is amended to read:

3209.10. (a) Medical treatment of a work-related injury required to cure or relieve the effects of the injury may be provided by a state licensed physician assistant or nurse practitioner, acting under the review or supervision of a physician and surgeon pursuant to standardized procedures or protocols within their lawfully authorized scope of practice. The reviewing or supervising physician and surgeon of the physician assistant or nurse practitioner shall be deemed to be the treating physician. For the purposes of this section, ''medical treatment'' includes the authority of the nurse practitioner or physician assistant to authorize the patient to receive time off from work for a period not to exceed three calendar days if that authority is included in a standardized procedure or protocol approved by the supervising physician. The nurse practitioner or physician assistant may cosign the Doctor's First Report of Occupational Injury or Illness. The treating physician shall make any determination of temporary disability and shall sign the report.

(b) The provision of subdivision (a) that requires the cosignature of the treating physician applies to this section only and it is not the intent of the Legislature that the requirement apply to any other section of law or to any other statute or regulation. Nothing in this section implies that a nurse practitioner or physician assistant is a physician as defined in Section 3209.3.

CHAPTER 101

An act to amend Section 1985.6 of the Code of Civil Procedure, relating to the production of evidence.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 1985.6 of the Code of Civil Procedure is amended to read:

1985.6. (a) For purposes of this section, the following definitions apply:

(1) ''Deposition officer'' means a person who meets the qualifications specified in paragraph (3) of subdivision (d) of Section 2020.

(2) ''Employee'' means any individual who is or has been employed by a witness subject to a subpoena duces tecum. ''Employee'' also means any individual who is or has been represented by a labor organization that is a witness subject to a subpoena duces tecum.

(3) ''Employment records'' means the original or any copy of books, documents, other writings, or electronic data pertaining to the employment of any employee maintained by the current or former employer of the employee, or by any labor organization that has represented or currently represents the employee.

(4) ''Labor organization'' has the meaning set forth in Section 1117 of the Labor Code.

(5) ''Subpoenaing party'' means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding, but does not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(b) Prior to the date called for in the subpoena duces tecum of the production of employment records, the subpoenaing party shall serve or cause to be served on the employee whose records are being sought a copy of: the subpoena duces tecum; the affidavit supporting the issuance of the subpoena, if any; and the notice described in subdivision (e), and proof of service as provided in paragraph (1) of subdivision (c). This service shall be made as follows:

(1) To the employee personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the employee is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor, or with whom the minor resides, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the employment records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall either:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the employee or by his or her attorney of record. The witness may presume that the attorney purporting to sign the authorization on behalf of the employee acted with the consent of the employee, and that any objection to release of records is waived.

(d) A subpoena duces tecum for the production of employment records shall be served in sufficient time to allow the witness a reasonable time, as provided in paragraph (1) of subdivision (d) of Section 2020, to locate and produce the records or copies thereof.

(e) Every copy of the subpoena duces tecum and affidavit served on an employee or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) employment records about the employee are being sought from the witness named on the subpoena; (2) the employment records may be protected by a right of privacy; (3) if the employee objects to the witness furnishing the records to the party seeking the records the employee shall file papers with the court prior to the date specified for production on the subpoena; and (4) if the subpoenaing party does not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the employee's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) Any employee whose employment records are sought by a subpoena duces tecum may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and the deposition officer at least five days prior to production. The failure to provide notice to the deposition officer does not invalidate the motion to quash or modify the subpoena duces tecum but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records.

Any nonparty employee whose employment records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party, and the deposition officer, the witness a written objection that cites the specific grounds on which production of the employment records should be prohibited.

No witness or deposition officer shall be required to produce employment records after receipt of notice that the motion has been brought by an employee, or after receipt of a written objection from a nonparty employee, except upon order of the court in which the action

is pending or by agreement of the parties, witnesses, and employees affected.

The party requesting an employee's employment records may bring a motion under subdivision (c) of Section 1987 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the employment records and the employee or the employee's attorney.

(g) Upon good cause shown and provided that the rights of witnesses and employees are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(h) This section may not be construed to apply to any subpoena duces tecum which does not request the records of any particular employee or employees and which requires a custodian of records to delete all information which would in any way identify any employee whose records are to be produced.

(i) This section does not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

CHAPTER 102

An act to add Section 3025.5 to the Family Code, relating to family law.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 3025.5 is added to the Family Code, to read:

3025.5. In any proceeding involving child custody or visitation rights, if a report containing psychological evaluations of a child or recommendations regarding custody of, or visitation with, a child is submitted to the court, including, but not limited to, a report created pursuant to Chapter 6 (commencing with Section 3110) of this part, a

recommendation made to the court pursuant to Section 3183, and a written statement of issues and contentions pursuant to subdivision (b) of Section 3151, that information shall be contained in a document that shall be placed in the confidential portion of the court file of the proceeding, and may not be disclosed, except to the following persons:

(a) A party to the proceeding and his or her attorney.

(b) A federal or state law enforcement officer, judicial officer, court employee, or family court facilitator for the county in which the action was filed, or an employee or agent of that facilitator, acting within the scope of his or her duties.

(c) Counsel appointed for the child pursuant to Section 3150.

(d) Any other person upon order of the court for good cause.

CHAPTER 103

An act to amend Section 1255.7 of the Health and Safety Code, and to amend Section 271.5 of the Penal Code, relating to abandoned newborns.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 1255.7 of the Health and Safety Code is amended to read:

1255.7. (a) (1) For purposes of this section, ''safe-surrender site'' means either of the following:

(A) A location designated by the board of supervisors of a county to be responsible for accepting physical custody of a minor child who is 72 hours old or younger from a parent or individual who has lawful custody of the child and who surrenders the child pursuant to Section 271.5 of the Penal Code.

(B) A location within a public or private hospital that is designated by that hospital to be responsible for accepting physical custody of a minor child who is 72 hours old or younger from a parent or individual who has lawful custody of the child and who surrenders the child pursuant to Section 271.5 of the Penal Code.

(2) For purposes of this section, ''personnel'' means any person who is an officer or employee of a safe-surrender site or who has staff privileges at the site.

(3) A hospital and any safe-surrender site designated by the county board of supervisors shall post a sign utilizing a statewide logo that has

been adopted by the State Department of Social Services that notifies the public of the location where a minor child 72 hours old or younger may be safely surrendered pursuant to this section.

(b) Any personnel on duty at a safe-surrender site shall accept physical custody of a minor child 72 hours old or younger pursuant to this section if a parent or other individual having lawful custody of the child voluntarily surrenders physical custody of the child to personnel who are on duty at the safe-surrender site. Safe-surrender site personnel shall ensure that a qualified person does all of the following:

(1) Places a coded, confidential ankle bracelet on the child.

(2) Provides, or makes a good faith effort to provide, to the parent or other individual surrendering the child a copy of a unique, coded, confidential ankle bracelet identification in order to facilitate reclaiming the child pursuant to subdivision (f). However, possession of the ankle bracelet identification, in and of itself, does not establish parentage or a right to custody of the child.

(3) Provides, or makes a good faith effort to provide, to the parent or other individual surrendering the child a medical information questionnaire, which may be declined, voluntarily filled out and returned at the time the child is surrendered, or later filled out and mailed in the envelope provided for this purpose. This medical information questionnaire shall not require any identifying information about the child or the parent or individual surrendering the child, other than the identification code provided in the ankle bracelet placed on the child. Every questionnaire provided pursuant to this section shall begin with the following notice in no less than 12-point type:

NOTICE: THE BABY YOU HAVE BROUGHT IN TODAY MAY HAVE SERIOUS MEDICAL NEEDS IN THE FUTURE THAT WE DON'T KNOW ABOUT TODAY. SOME ILLNESSES, INCLUDING CANCER, ARE BEST TREATED WHEN WE KNOW ABOUT FAMILY MEDICAL HISTORIES. IN ADDITION, SOMETIMES RELATIVES ARE NEEDED FOR LIFE-SAVING TREATMENTS. TO MAKE SURE THIS BABY WILL HAVE A HEALTHY FUTURE, YOUR ASSISTANCE IN COMPLETING THIS QUESTIONNAIRE FULLY IS ESSENTIAL. THANK YOU.

(c) Personnel of a safe-surrender site that has physical custody of a minor child pursuant to this section shall ensure that a medical screening examination and any necessary medical care is provided to the minor child. Notwithstanding any other provision of law, the consent of the parent or other relative shall not be required to provide that care to the minor child.

(d) (1) As soon as possible, but in no event later than 48 hours after the physical custody of a child has been accepted pursuant to this section, personnel of the safe-surrender site that has physical custody of the child

shall notify child protective services or a county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code, that the safe-surrender site has physical custody of the child pursuant to this section. In addition, any medical information pertinent to the child's health, including, but not limited to, information obtained pursuant to the medical information questionnaire described in paragraph (3) of subdivision (b) that has been received by or is in the possession of the safe-surrender site shall be provided to that child protective services or county agency.

(2) Any personal identifying information that pertains to a parent or individual who surrenders a child that is obtained pursuant to the medical information questionnaire is confidential and shall be exempt from disclosure by the child protective services or county agency under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Any personal identifying information that pertains to a parent or individual who surrenders a child shall be redacted from any medical information provided to child protective services or the county agency providing child welfare services.

(e) Child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall assume temporary custody of the child pursuant to Section 300 of the Welfare and Institutions Code immediately upon receipt of notice under subdivision (d). Child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall immediately investigate the circumstances of the case and file a petition pursuant to Section 311 of the Welfare and Institutions Code. Child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall immediately notify the State Department of Social Services of each child to whom this subdivision applies upon taking temporary custody of the child pursuant to Section 300 of the Welfare and Institutions Code. As soon as possible, but no later than 24 hours after temporary custody is assumed, child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall report all known identifying information concerning the child, except personal identifying information pertaining to the parent or individual who surrendered the child, to the California Missing Children Clearinghouse and to the National Crime Information Center.

(f) If, prior to the filing of a petition under subdivision (e), a parent or individual who has voluntarily surrendered a child pursuant to this section requests that the safe-surrender site that has physical custody of the child pursuant to this section return the child and the safe-surrender

site still has custody of the child, personnel of the safe-surrender site shall either return the child to the parent or individual or contact a child protective agency if any personnel at the safe-surrender site knows or reasonably suspects that the child has been the victim of child abuse or neglect. The voluntary surrendering of a child pursuant to this section is not in and of itself a sufficient basis for reporting child abuse or neglect. The terms ''child abuse,'' ''child protective agency,'' ''mandated reporter,'' ''neglect,'' and ''reasonably suspects'' shall be given the same meanings as in Article 2.5 (commencing with Section 11164) of Part 4 of Title 1 of the Penal Code.

(g) Subsequent to the filing of a petition under subdivision (e), if within 14 days of the voluntary surrender described in this section, the parent or individual who surrendered custody returns to claim physical custody of the child, the child welfare agency shall verify the identity of the parent or individual, conduct an assessment of his or her circumstances and ability to parent, and request that the juvenile court dismiss the petition for dependency and order the release of the child, if the child welfare agency determines that none of the conditions described in subdivisions (a) to (d), inclusive, of Section 319 of the Welfare and Institutions Code currently exist.

(h) A safe-surrender site, or personnel of the safe-surrender site, that accepts custody of a surrendered child pursuant to this section shall not be subject to civil, criminal, or administrative liability for accepting the child and caring for the child in the good faith belief that action is required or authorized by this section, including, but not limited to, instances where the child is older than 72 hours or the parent or individual surrendering the child did not have lawful physical custody of the child. This subdivision does not confer immunity from liability for personal injury or wrongful death, including, but not limited to, injury resulting from medical malpractice.

(i) (1) In order to encourage assistance to persons who voluntarily surrender physical custody of a child pursuant to this section or Section 271.5 of the Penal Code, no person who, without compensation and in good faith, provides assistance for the purpose of effecting the safe surrender of a minor 72 hours old or younger shall be civilly liable for injury to or death of the minor child as a result of any of his or her acts or omissions. This immunity does not apply to any act or omission constituting gross negligence, recklessness, or willful misconduct.

(2) For purposes of this section, ''assistance'' means transporting the minor child to the safe-surrender site as a person with lawful custody, or transporting or accompanying the parent or person with lawful custody at the request of that parent or person to effect the safe surrender, or performing any other act in good faith for the purpose of effecting the safe surrender of the minor.

(j) For purposes of this section ''lawful custody'' means physical custody of a minor 72 hours old or younger accepted by a person from a parent of the minor, who the person believes in good faith is the parent of the minor, with the specific intent and promise of effecting the safe surrender of the minor.

(k) Any identifying information that pertains to a parent or individual who surrenders a child pursuant to this section, that is obtained as a result of the questionnaire described in paragraph (3) of subdivision (b) or in any other manner, is confidential, shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall not be disclosed by any personnel of a safe-surrender site that accepts custody of a child pursuant to this section.

(*l*) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or repeals that date.

SEC. 2. Section 271.5 of the Penal Code is amended to read:

271.5. (a) No parent or other individual having lawful custody of a minor child 72 hours old or younger may be prosecuted for a violation of Section 270, 270.5, 271, or 271a if he or she voluntarily surrenders physical custody of the child to personnel on duty at a safe-surrender site.

(b) For purposes of this section, ''safe-surrender site'' has the same meaning as defined in paragraph (1) of subdivision (a) of Section 1255.7 of the Health and Safety Code.

(c) (1) For purposes of this section, ''lawful custody'' has the same meaning as defined in subdivision (k) of Section 1255.7 of the Health and Safety Code.

(2) For purposes of this section, ''personnel'' has the same meaning as defined in paragraph (2) of subdivision (a) of Section 1255.7 of the Health and Safety Code.

(d) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or deletes that date.

CHAPTER 104

An act to amend Sections 1278 and 1287 of the Penal Code, relating to bail services.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 1278 of the Penal Code is amended to read:

1278. (a) Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An order having been made on the ____ day of ____, 20__, by ____, a judge of the ____ Court of ____ County, that ____ be held to answer upon a charge of (stating briefly the nature of the offense), upon which he or she has been admitted to bail in the sum of ____ dollars ($____); we, ____ and ____, of ____ (stating their place of residence and occupation), hereby undertake that the above-named ____ will appear and answer any charge in any accusatory pleading based upon the acts supporting the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself or herself amenable to the orders and process of the court, and if convicted, will appear for pronouncement of judgment or grant of probation, or if he or she fails to perform either of these conditions, that we will pay to the people of the State of California the sum of ____ dollars ($____) (inserting the sum in which the defendant is admitted to bail). If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said (naming the sureties), and the defendant if he or she be a party to the bond, for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306.

(b) Every undertaking of bail shall contain the bail agent license number of the owner of the bail agency issuing the undertaking along with the name, address, and phone number of the agency, regardless of whether the owner is an individual, partnership, or corporation. The bail agency name on the undertaking shall be a business name approved by the Insurance Commissioner for use by the bail agency owner, and be so reflected in the public records of the commissioner. The license number of the bail agent appearing on the undertaking shall be in the same type size as the name, address, and phone number of the agency.

SEC. 2. Section 1287 of the Penal Code is amended to read:

1287. (a) The bail shall be put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An indictment having been found on the ____ day of ____, 20__, in the Superior Court of the County of ____, charging ____ with the crime of ____ (designating it generally) and he or she having been admitted to bail in the sum of ____ dollars ($____), we, ____ and ____, of ____ (stating their place of residence and occupation), hereby undertake that

the above-named ____ will appear and answer any charge in any accusatory pleading based upon the acts supporting the indictment above mentioned, in whatever court it may be prosecuted, and will at all times render himself or herself amenable to the orders and process of the court, and, if convicted, will appear for pronouncement of judgment or grant of probation; or, if he or she fails to perform either of these conditions, that we will pay to the people of the State of California the sum of ____ dollars ($____) (inserting the sum in which the defendant is admitted to bail). If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said (naming the sureties, and the defendant if he or she be a party to the bond), for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306.

(b) Every undertaking of bail shall contain the bail agent license number of the owner of the bail agency issuing the undertaking along with the name, address, and phone number of the agency, regardless of whether the owner is an individual, partnership, or corporation. The bail agency name on the undertaking shall be a business name approved by the Insurance Commissioner for use by the bail agency owner, and be so reflected in the public records of the commissioner. The license number of the bail agent appearing on the undertaking shall be in the same type size as the name, address, and phone number of the agency.

CHAPTER 105

An act to amend Section 42285.3 of the Education Code, relating to schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 42285.3 of the Education Code is amended to read:

42285.3. Notwithstanding subdivision (b) of Section 42280 or any other provision of law, a unified school district that is the only school district in a county, that has received more than two million seven hundred thousand dollars ($2,700,000) in federal Forest Reserve funds in the 1992–93 school year and less than one million three hundred thousand dollars ($1,300,000) in federal Forest Reserve funds in the 1996–97 school year, and that has fewer than 4,501 units of average daily

attendance in the 1997–98 school year or in subsequent school years shall be eligible to receive apportionments pursuant to the schedules for a ''necessary small school'' and a ''necessary small high school,'' as set forth in this article, for up to the total number of schools in the district that would have met the criteria for classification as a necessary small school or a necessary small high school in the 1996–97 fiscal year, if the district had fewer than 2,501 units of average daily attendance in the 1996–97 fiscal year, except that this section does not apply in a school year in which an otherwise eligible school district receives more than two million dollars ($2,000,000) in federal Forest Reserve funds.

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

In order to ensure the continuation of funding of certain schools and high schools in certain unified school districts as necessary small schools and necessary small high schools, it is necessary that this act take effect immediately.

CHAPTER 106

An act to amend Section 44265.8 of, and to repeal Section 44265.10 of, the Education Code, relating to teacher credentialing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 44265.8 of the Education Code is amended to read:

44265.8. (a) The Commission on Teacher Credentialing shall issue a two-year services credential with a specialization in pupil personnel services, solely for the purpose of providing services as a school counselor, school psychologist, or school social worker for deaf and hearing-impaired pupils, to any prelingually deaf candidate upon medical or other appropriate professional verifications, provided the candidate has met the minimum requirements specified in Section 44266.

(b) The applicant is exempted from the requirements in Section 44252 and subdivision (b) of Section 44830.

(c) For purposes of this section, ''prelingually deaf'' means having suffered a hearing loss prior to three years of age that prevents the processing of linguistic information through hearing, with or without amplification.

(d) The services credential issued under this section authorizes the holder to serve at all grade levels as a school counselor, school psychologist, or school social worker, as specified on the credential, for deaf and hearing-impaired pupils who are enrolled in state special schools or in special classes for pupils with hearing impairments.

SEC. 2. Section 44265.10 of the Education Code is repealed.

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

In order that the unique talent and understanding that prelingually deaf social workers bring to the pupils with whom they work be available at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 107

An act to add Section 259 to the Vehicle Code, relating to vehicles.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 259 is added to the Vehicle Code, to read:

259. ''Collector motor vehicle'' means a motor vehicle owned by a collector, as defined in subdivision (a) of Section 5051, and the motor vehicle is used primarily in shows, parades, charitable functions, and historical exhibitions for display, maintenance, and preservation, and is not used primarily for transportation.

CHAPTER 108

An act to amend Section 21180 of the Public Contract Code, to amend Sections 12741 and 12742 of the Water Code, and to amend Sections 1, 2, 4, 5, 6, and 41 of the Lake County Flood Control and Water

Conservation District Act (Chapter 1544 of the Statutes of 1951), relating to the Lake County Flood Control and Water Conservation District.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 21180 of the Public Contract Code is amended to read:

21180. This article applies to contracts by the Lake County Watershed Protection District, which is governed in accordance with Chapter 1544 of the Statutes of 1951, as amended.

SEC. 2. Section 12741 of the Water Code is amended to read:

12741. The Lake County Watershed Protection District shall give assurances satisfactory to the Secretary of the Army that the local cooperation, required by the Act of Congress approved October 27, 1965 (Public Law 89-298, 79 Stat. 1083, Title II, the Flood Control Act of 1965), will be furnished by the district in connection with the project for flood protection adopted and authorized in Section 12740.

SEC. 3. Section 12742 of the Water Code is amended to read:

12742. The Lake County Watershed Protection District, in conjunction with the Department of the Army, shall execute the plans and projects referred to in Section 12740, and may make modifications and amendments to the plans as may be necessary to execute them for the purposes of Chapters 1 (commencing with Section 12570) and 2 (commencing with Section 12639) of this part.

SEC. 4. Section 1 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

Section 1. The Lake County Watershed Protection District is hereby established. The territory of the district is that of Lake County.

SEC. 5. Section 2 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

Sec. 2. For the purposes of this act, ''district'' means the Lake County Watershed Protection District.

SEC. 6. Section 4 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

Sec. 4. (a) The objects and purposes of this act are to provide for the control, impounding, treatment, and disposal of the flood and storm waters of the district, the conservation and protection of all waters within the district, including both surface water and groundwater, and the

control of flood and storm waters of streams that have their source outside of the district, but which streams and the flood waters thereof flow into the district, to protect from flood or storm waters the watercourses, lakes, groundwater, watersheds, harbors, public highways, life, and property in the district, to develop and improve the quality of all waters within the district for all beneficial uses, including domestic, irrigation, industrial and recreational uses, and to protect and improve the quality of all waters within the district.

(b) The objects and purposes of this act are also to provide for the participation of the district in the national pollutant discharge elimination system (NPDES) permit program in accordance with the Clean Water Act (33 U.S.C. 1251 et seq.).

SEC. 7. Section 5 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

Sec. 5. The district is hereby declared to be a body corporate and politic and may do all of the following:

1. Have perpetual succession.
2. Sue and be subject to suit in the name of said district.
3. Adopt a seal.
4. Acquire by grant, purchase, lease, gift, devise, contract, construction, or otherwise, and hold, use, enjoy, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, water and water rights, and privileges and construct, maintain, alter, and operate any and all works or improvements, within or outside the district, necessary or proper to carry out any of the objects of purposes of this act and convenient to the full exercise of its powers, and complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. Conserve all waters within the district, and control the flood and storm waters of the district and the flood and storm waters of streams that have their sources outside the district, but which streams and floodwaters thereof, flow into the district, and protect from damage from those flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in the district, and the watercourses outside the district of streams flowing into the district, and to develop waters within or outside the district for domestic irrigation, industrial, and recreational uses, and construct works therefor, including works for the storage and delivery of water; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although the powers may be of the same nature as the powers of the district. Any other political subdivision

may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which that other political subdivision has an interest, or for the use, or joint use, of property or facilities in which the district has an interest.

6. Cooperate and act in conjunction with the federal government, the state, or any of their engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Lake or adjacent counties, or with any other agencies, in the construction of any work for the storage or delivery of all waters within or outside the district for domestic, irrigation, industrial, and recreational uses and for the conservation of waters within the district, for the controlling of flood or storm waters of or flowing into the district, or for the protection of life or property in the district.

7. Carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to the beneficial use of waters within or outside the district, including domestic, irrigation, industrial, and recreational uses and the conservation of water and the control of floods both within and outside the district, and for those purposes the district shall have the right of access through its authorized representatives to all properties within the district. The district, through its authorized representatives, may enter upon those lands and make examinations, surveys, and maps thereof.

8. Enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; acquire by purchase, lease, contract, gift, devise, or other legal means all lands and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of the works, enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by the district.

9. Incur indebtedness and issue bonds in the manner provided in this act.

10. In compliance with Article XIII C and Article XIII D of the California Constitution, cause taxes, fees, or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner provided in this act.

11. Make contracts, and employ labor, and do all acts necessary for the full exercise of all powers vested in the district or any of the officers thereof by this act.

12. Exercise the right of eminent domain, either within or outside the district, to take any property necessary to carry out any of the objects or purposes of this act. The district in exercising that power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility that is required to be moved to a new location.

The district shall not condemn property outside the County of Lake unless the consent of the governing board of the county, in which the property to be condemned is located, has first been obtained.

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to provide for a water supply for that city and county or municipal utility district, or as affecting the absolute control of any properties of that city and county or municipal utility district necessary for that water supply and nothing herein contained shall be construed as vesting any power of control over those properties in the district or in any officer thereof, or in any person referred to in this act.

13. Provide for the operation and maintenance of any works of any kind or channelways, that may be built or operated by the state or the federal government without cost to the district, for the control or disposition of flood and storm waters within the district whether those waters originate within or outside the district.

14. Contract with the County of Lake, because of the interest of the County of Lake in the general welfare and preservation and promotion of land values in the county and in the maintenance, construction and improvement of public roads, bridges and other county property within any zone that may be damaged or destroyed by those flood and storm waters and that will be protected by proper control and disposition of those waters, for the participation by that county, on a percentage or other appropriate basis, in the amount or amounts that may be taxed or assessed from time to time against any lands in any zone by any taxing or assessing agency or authority, including the district, to provide funds for the operation and maintenance of any works of any kind or channelways which may be built, maintained or operated by the state or the federal government or the district for the benefit of that zone; and the County of Lake may enter into that contract with the district.

15. Levy assessments in any zone, on the basis of benefits as provided in Section 13 or 13.1 of this act, to raise funds for payment of expenses of operation and of works or channelways in that zone and the cost of levying and collecting those assessments.

16. Levy and collect special taxes in the district or any zone in accordance with Section 13 of this act.

17. Levy and collect benefit assessments in the district or any zone in accordance with Section 13 of this act.

18. Participate alone, or jointly with Lake County, or cities or districts within Lake County, in the national pollutant discharge elimination system (NPDES) permit program in accordance with the Clean Water Act (33 U.S.C. 1252 et seq.), and undertake necessary acts in connection with that program.

SEC. 8. Section 6 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

Sec. 6. (a) The Board of Supervisors of Lake County shall be and is hereby designated as, and empowered to act as, the ex officio Board of Directors of the Lake County Watershed Protection District. For the purposes of this act, the terms ''board'' and ''board of supervisors'' means the Board of Directors of the Lake County Watershed Protection District.

(b) Each member of the board of directors of the district shall receive as compensation for his or her services one hundred fifty dollars ($150) per month, and his or her actual and necessary expenses in the performance of official duties under this act, payable from the funds of the district in addition to his or her salary as county supervisor.

(c) All ordinances, resolutions, and other legislative acts of the district shall be adopted by the board of directors, and certified to, recorded and published, in the same manner, except as otherwise expressly provided in this act, as are ordinances, resolutions, or other legislative acts of the County of Lake.

SEC. 9. Section 41 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

Sec. 41. This act shall be known and may be cited as the Lake County Watershed Protection District Act.

CHAPTER 109

An act to add Section 5080.29 to the Public Resources Code, relating to state parks.

[Approved by Governor July 5, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 5080.29 is added to the Public Resources Code, to read:

5080.29. Notwithstanding any other provision of law, including subdivision (a) of Section 5080.18, the department may enter into concession contracts for the development, operation, and maintenance of marinas, for a term of up to 30 years, if the director determines that the term authorized under this section is necessary to allow for amortization of the loan, or to serve the best interests of the state.

CHAPTER 110

An act to amend Sections 65863.10, 65863.11, and 65863.13 of the Government Code, relating to housing.

[Approved by Governor July 6, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 65863.10 of the Government Code is amended to read:

65863.10. (a) As used in this section, the following terms have the following meaning:

(1) ''Affected public entities'' means the mayor of the city in which the assisted housing development is located, or, if located in an unincorporated area, the chair of the board of supervisors of the county; the appropriate local public housing authority, if any; and the Department of Housing and Community Development.

(2) ''Affected tenant'' means a tenant household residing in an assisted housing development, as defined in paragraph (3), at the time notice is required to be provided pursuant to this section, that benefits from the government assistance.

(3) ''Assisted housing development'' means a multifamily rental housing development that receives governmental assistance under any of the following programs:

(A) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).

(B) The following federal programs:

(i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715*l*(d)(3) and (5)).

(ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).

(iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q).

(C) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).

(D) Programs under Sections 514, 515, 516, 533, and 538 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

(E) Section 42 of the Internal Revenue Code.

(F) Section 142(d) of the Internal Revenue Code (tax-exempt private activity mortgage revenue bonds).

(G) Section 147 of the Internal Revenue Code (Section 501(c)(3) bonds).

(H) Title I of the Housing and Community Development Act of 1974, as amended (Community Development Block Grant program).

(I) Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, as amended (HOME Investment Partnership Program).

(J) Titles IV and V of the McKinney-Vento Homeless Assistance Act of 1987, as amended, including the Department of Housing and Urban Development's Supportive Housing Program, Shelter Plus Care program, and surplus federal property disposition program.

(K) Grants and loans made by the Department of Housing and Community Development, including the Rental Housing Construction Program, CHRP-R, and other rental housing finance programs.

(L) Chapter 1138 of the Statutes of 1987.

(M) The following assistance provided by counties or cities in exchange for restrictions on the maximum rents that may be charged for units within a multifamily rental housing development and on the maximum tenant income as a condition of eligibility for occupancy of the unit subject to the rent restriction, as reflected by a recorded agreement with a county or city:

(i) Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(ii) Local housing trust funds, as referred to in paragraph (3) of subdivision (a) of Section 50843 of the Health and Safety Code.

(iii) The sale or lease of public property at or below market rates.

(iv) The granting of density bonuses, or concessions or incentives, including fee waivers, parking variances, or amendments to general plans, zoning, or redevelopment project area plans, pursuant to Chapter 4.3 (commencing with Section 65915).

Assistance pursuant to this subparagraph shall not include the use of tenant-based Housing Choice Vouchers (Section 8(o) of the United States Housing Act of 1937, 42 U.S.C. Sec. 1437f(o), excluding subparagraph (13) relating to project-based assistance). Restrictions shall not include any rent control or rent stabilization ordinance imposed by a county, city, or city and county.

(4) ''City'' means a general law city, a charter city, or a city and county.

(5) ''Expiration of rental restrictions'' means the expiration of rental restrictions for an assisted housing development described in paragraph (3) unless the development has other recorded agreements restricting the rent to the same or lesser levels for at least 50 percent of the units.

(6) ''Low or moderate income'' means having an income as defined in Section 50093 of the Health and Safety Code.

(7) ''Prepayment'' means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an assisted housing development described in paragraph (3) that would have the effect of removing the current rent or occupancy or rent and occupancy restrictions contained in the applicable laws and the regulatory agreement.

(8) ''Termination'' means an owner's decision not to extend or renew its participation in a federal, state, or local government subsidy program or private, nongovernmental subsidy program for an assisted housing development described in paragraph (3), either at or prior to the scheduled date of the expiration of the contract, that may result in an increase in tenant rents or a change in the form of the subsidy from project-based to tenant-based.

(9) ''Very low income'' means having an income as defined in Section 50052.5 of the Health and Safety Code.

(b) (1) At least 12 months prior to the anticipated date of the termination of a subsidy contract, the expiration of rental restrictions, or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice. The notice shall contain all of the following:

(A) In the event of termination, a statement that the owner intends to terminate the subsidy contract or rental restrictions upon its expiration date, or the expiration date of any contract extension thereto.

(B) In the event of the expiration of rental restrictions, a statement that the restrictions will expire, and in the event of prepayment, termination, or the expiration of rental restrictions whether the owner intends to increase rents during the 12 months following prepayment, termination, or the expiration of rental restrictions to a level greater than permitted under Section 42 of the Internal Revenue Code.

(C) In the event of prepayment, a statement that the owner intends to pay in full or refinance the federally insured or federally held mortgage indebtedness prior to its original maturity date, or voluntarily cancel the mortgage insurance.

(D) The anticipated date of the termination, prepayment of the federal or other program or expiration of rental restrictions, and the identity of the federal or other program described in subdivision (a).

(E) A statement that the proposed change would have the effect of removing the current low-income affordability restrictions in the applicable contract or regulatory agreement.

(F) A statement of the possibility that the housing may remain in the federal or other program after the proposed date of termination of the subsidy contract or prepayment if the owner elects to do so under the terms of the federal government's or other program operator's offer.

(G) A statement whether other governmental assistance will be provided to tenants residing in the development at the time of the termination of the subsidy contract or prepayment.

(H) A statement that a subsequent notice of the proposed change, including anticipated changes in rents, if any, for the development, will be provided at least six months prior to the anticipated date of termination of the subsidy contract, or expiration of rental restrictions, or prepayment.

(I) A statement of notice of opportunity to submit an offer to purchase, as required in Section 65863.11.

(2) Notwithstanding paragraph (1), if an owner provides a copy of a federally required notice of termination of a subsidy contract or prepayment at least 12 months prior to the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities, the owner shall be deemed in compliance with this subdivision, if the notice is in compliance with all federal laws. However, the federally required notice does not satisfy the requirements of Section 65863.11.

(c) (1) At least six months prior to the anticipated date of termination of a subsidy contract, expiration of rental restrictions or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions shall provide a notice of the proposed change to each affected

tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice.

(2) The notice to the tenants shall contain all of the following:

(A) The anticipated date of the termination or prepayment of the federal or other program, or the expiration of rental restrictions, and the identity of the federal or other program, as described in subdivision (a).

(B) The current rent and rent anticipated for the unit during the 12 months immediately following the date of the prepayment or termination of the federal or other program, or expiration of rental restrictions.

(C) A statement that a copy of the notice will be sent to the city, county, or city and county, where the assisted housing development is located, to the appropriate local public housing authority, if any, and to the Department of Housing and Community Development.

(D) A statement of the possibility that the housing may remain in the federal or other program after the proposed date of subsidy termination or prepayment if the owner elects to do so under the terms of the federal government's or other program administrator's offer or that a rent increase may not take place due to the expiration of rental restrictions.

(E) A statement of the owner's intention to participate in any current replacement subsidy program made available to the affected tenants.

(F) The name and telephone number of the city, county, or city and county, the appropriate local public housing authority, if any, the Department of Housing and Community Development, and a legal services organization, that can be contacted to request additional written information about an owner's responsibilities and the rights and options of an affected tenant.

(3) In addition to the information provided in the notice to the affected tenant, the notice to the affected public entities shall contain information regarding the number of affected tenants in the project, the number of units that are government assisted and the type of assistance, the number of the units that are not government assisted, the number of bedrooms in each unit that is government assisted, and the ages and income of the affected tenants. The notice shall briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken and specific governmental approvals that are required to be obtained, the reason the owner seeks to terminate the subsidy contract or prepay the mortgage, and any contacts the owner has made or is making with other governmental agencies or other interested parties in connection with the notice. The owner shall also attach a copy of any federally required notice of the termination of the subsidy contract or prepayment that was provided at least six months prior to the proposed change. The

information contained in the notice shall be based on data that is reasonably available from existing written tenant and project records.

(d) The owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions shall provide additional notice of any significant changes to the notice required by subdivision (c) within seven business days to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. ''Significant changes'' shall include, but not be limited to, any changes to the date of termination or prepayment, or expiration of rental restrictions or the anticipated new rent.

(e) An owner who is subject to the requirements of this section shall also provide a copy of any notices issued to existing tenants pursuant to subdivision (b), (c), or (d) to any prospective tenant at the time he or she is interviewed for eligibility.

(f) This section shall not require the owner to obtain or acquire additional information that is not contained in the existing tenant and project records, or to update any information in his or her records. The owner shall not be held liable for any inaccuracies contained in these records or from other sources, nor shall the owner be liable to any party for providing this information.

(g) For purposes of this section, service of the notice to the affected tenants, the city, county, or city and county, the appropriate local public housing authority, if any, and the Department of Housing and Community Development by the owner pursuant to subdivisions (b) to (e), inclusive, shall be made by first-class mail postage prepaid.

(h) Nothing in this section shall enlarge or diminish the authority, if any, that a city, county, city and county, affected tenant, or owner may have, independent of this section.

(i) If, prior to January 1, 2001, the owner has already accepted a bona fide offer from a qualified entity, as defined in subdivision (c) of Section 65863.11, and has complied with this section as it existed prior to January 1, 2001, at the time the owner decides to sell or otherwise dispose of the development, the owner shall be deemed in compliance with this section.

(j) Injunctive relief shall be available to any party identified in paragraph (1) or (2) of subdivision (a) who is aggrieved by a violation of this section.

(k) The Director of Housing and Community Development shall approve forms to be used by owners to comply with subdivisions (b) and (c). Once the director has approved the forms, an owner shall use the approved forms to comply with subdivisions (b) and (c).

(*l*) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2011, deletes or extends that date.

SEC. 2. Section 65863.11 of the Government Code is amended to read:

65863.11. (a) Terms used in this section shall be defined as follows:

(1) ''Assisted housing development'' and ''development'' mean a multifamily rental housing development as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(2) ''Owner'' means an individual, corporation, association, partnership, joint venture, or business entity that holds title to an assisted housing development.

(3) ''Tenant'' means a tenant, subtenant, lessee, sublessee, or other person legally in possession or occupying the assisted housing development.

(4) ''Tenant association'' means a group of tenants who have formed a nonprofit corporation, cooperative corporation, or other entity or organization, or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an assisted housing development and that represents the interest of at least a majority of the tenants in the assisted housing development.

(5) ''Low or moderate income'' means having an income as defined in Section 50093 of the Health and Safety Code.

(6) ''Very low income'' means having an income as defined in Section 50052.5 of the Health and Safety Code.

(7) ''Local nonprofit organizations'' means not-for-profit corporations organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income, and which have a broadly representative board, a majority of whose members are community based and have a proven track record of local community service.

(8) ''Local public agencies'' means housing authorities, redevelopment agencies, or any other agency of a city, county, or city and county, whether general law or chartered, which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(9) ''Regional or national organizations'' means not-for-profit, charitable corporations organized on a multicounty, state, or multistate basis that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income.

(10) ''Regional or national public agencies'' means multicounty, state, or multistate agencies that are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(11) ''Use restriction'' means any federal, state, or local statute, regulation, ordinance, or contract that, as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy, or mortgage insurance, to an assisted housing development, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development; or requires that rents for any of the units within a development be reviewed by any governmental body or agency before the rents are implemented.

(12) ''Profit-motivated organizations and individuals'' means individuals or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Division 1 (commencing with Section 15001) of Title 2 of, the Corporations Code, that carry on as a business for profit.

(13) ''Department'' means the Department of Housing and Community Development.

(14) ''Offer to purchase'' means an offer from a qualified or nonqualified entity that is nonbinding on the owner.

(15) ''Expiration of rental restrictions'' has the meaning given in paragraph (5) of subdivision (a) of Section 65863.10.

(b) An owner of an assisted housing development shall not terminate a subsidy contract or prepay the mortgage pursuant to Section 65863.10, unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner of an assisted housing development in which there will be the expiration of rental restrictions must also provide each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(c) An owner of an assisted housing development shall not sell, or otherwise dispose of, the development at any time within the five years prior to the expiration of rental restrictions or at any time if the owner is eligible for prepayment or termination within five years unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner

who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(d) The entities to whom an opportunity to purchase shall be provided include only the following:

(1) The tenant association of the development.

(2) Local nonprofit organizations and public agencies.

(3) Regional or national nonprofit organizations and regional or national public agencies.

(4) Profit-motivated organizations or individuals.

(e) For the purposes of this section, to qualify as a purchaser of an assisted housing development, an entity listed in subdivision (d) shall do all of the following:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by itself or through a management agent.

(2) Agree to obligate itself and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for either a 30-year period from the date that the purchaser took legal possession of the housing or the remaining term of the existing federal government assistance specified in subdivision (a) of Section 65863.10, whichever is greater. The development shall be continuously occupied in the approximate percentages that those households who have occupied that development on the date the owner gave notice of intent or the approximate percentages specified in existing use restrictions, whichever is higher. This obligation shall be recorded prior to the close of escrow in the office of the county recorder of the county in which the development is located and shall contain a legal description of the property, indexed to the name of the owner as grantor. An owner that obligates itself to an enforceable regulatory agreement that will ensure for a period of not less than 30 years that rents for units occupied by low- and very low income households or that are vacant at the time of executing a purchase agreement will conform with restrictions imposed by Section 42(f) of the Internal Revenue Code shall be deemed in compliance with this paragraph. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, should they be available, provided that assistance is at a level to maintain the project's fiscal viability.

(3) Local nonprofit organizations and public agencies shall have no member among their officers or directorate with a financial interest in assisted housing developments that have terminated a subsidy contract or prepaid a mortgage on the development without continuing the low-income restrictions.

(f) If an assisted housing development is not economically feasible, as defined in paragraph (3) of subdivision (h) of Section 17058 of the

Revenue and Taxation Code, a purchaser shall be entitled to remove one or more units from the rent and occupancy requirements as is necessary for the development to become economically feasible, provided that once the development is again economically feasible, the purchaser shall designate the next available units as low-income units up to the original number of those units.

(g) (1) If an owner decides to terminate a subsidy contract, or prepay the mortgage pursuant to Section 65863.10, or sell or otherwise dispose of the assisted housing development pursuant to subdivision (b) or (c), or if the owner has an assisted housing development in which there will be the expiration of rental restrictions, the owner shall first give notice of the opportunity to offer to purchase to each qualified entity on the list provided to the owner by the department, in accordance with subdivision (o), as well as to those qualified entities that directly contact the owner. The notice of the opportunity to offer to purchase must be given prior to or concurrently with the notice required pursuant to Section 65863.10 for a period of at least 12 months. The owner shall contact the department to obtain the list of qualified entities. The notice shall conform to the requirements of subdivision (h) and shall be sent to the entities by registered or certified mail, return receipt requested. The owner shall also post a copy of the notice in a conspicuous place in the common area of the development.

(2) If the owner already has a bona fide offer to purchase from an entity prior to January 1, 2001, at the time the owner decides to sell or otherwise dispose of the development, the owner shall not be required to comply with this subdivision. However, the owner shall notify the department of this exemption and provide the department a copy of the offer.

(h) The initial notice of a bona fide opportunity to submit an offer to purchase shall contain all of the following:

(1) A statement that the owner will make available to each of the type of entities listed in subdivision (d), within 15 business days of receiving a request therefor, the terms of assumable financing, if any; the terms of the subsidy contract, if any; and proposed improvements to the property to be made by the owner in connection with the sale, if any.

(2) A statement that each of the type of entities listed in subdivision (d) has the right to purchase the development under this section.

(3) A statement that the owner will make available to each of the type of entities listed in subdivision (d), within 15 business days of receiving a request therefor, itemized lists of monthly operating expenses, capital improvements as determined by the owner made within each of the two preceding calendar years, the amount of project reserves, and copies of the two most recent financial and physical inspection reports on the development, if any, filed with the federal, state, or local agencies.

(4) A statement that the owner will make available to each of the entities listed in subdivision (d), within 15 business days of a request therefor, the most recent rent roll listing the rent paid for each unit and the subsidy, if any, paid by a governmental agency as of the date the notice of intent was made pursuant to Section 65863.10, and a statement of the vacancy rate at the development for each of the two preceding calendar years.

(5) A statement that the owner has satisfied all notice requirements pursuant to subdivision (b) of Section 65863.10, unless the notice of opportunity to submit an offer to purchase is delivered more than 12 months prior to the anticipated date of termination, prepayment, or expiration of rental restrictions.

(i) If a qualified entity elects to purchase an assisted housing development, it shall make a bona fide offer to purchase the development. A qualified entity's bona fide offer to purchase shall identify whether it is a tenant association, nonprofit organization, public agency, or profit-motivated organizations or individuals and shall certify, under penalty of perjury, that it is qualified pursuant to subdivision (e). During the first 180 days from the date of an owner's bona fide notice of the opportunity to submit an offer to purchase, an owner shall accept a bona fide offer to purchase only from a qualified entity. During this 180-day period, the owner shall not accept offers from any other entity.

(j) When a bona fide offer to purchase has been made to an owner, and the offer is accepted, a purchase agreement shall be executed.

(k) Either the owner or the qualified entity may request that the fair market value of the property, as a development, be determined by an independent appraiser qualified to perform multifamily housing appraisals, who shall be selected and paid by the requesting party. All appraisers shall possess qualifications equivalent to those required by the members of the Appraisers Institute. This appraisal shall be nonbinding on either party with respect to the sales price of the development offered in the bona fide offer to purchase, or the acceptance or rejection of the offer.

(*l*) During the 180-day period following the initial 180-day period required pursuant to subdivision (i), an owner may accept an offer from a person or an entity that does not qualify under subdivision (e). This acceptance shall be made subject to the owner providing each qualified entity that made a bona fide offer to purchase the first opportunity to purchase the development at the same terms and conditions as the pending offer to purchase, unless these terms and conditions are modified by mutual consent. The owner shall notify in writing those qualified entities of the terms and conditions of the pending offer to purchase, sent by registered or certified mail, return receipt requested.

The qualified entity shall have 30 days from the date the notice is mailed to submit a bona fide offer to purchase and that offer shall be accepted by the owner. The owner shall not be required to comply with the provisions of this subdivision if the person or the entity making the offer during this time period agrees to maintain the development for persons and families of very low, low, and moderate income in accordance with paragraph (2) of subdivision (e). The owner shall notify the department regarding how the buyer is meeting the requirements of paragraph (2) of subdivision (e).

(m) This section shall not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise, or operation of law; a sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner; or an owner who certifies, under penalty of perjury, the existence of a financial emergency during the period covered by the first right of refusal requiring immediate access to the proceeds of the sale of the development. The certification shall be made pursuant to subdivision (p).

(n) Prior to the close of escrow, an owner selling, leasing, or otherwise disposing of a development to a purchaser who does not qualify under subdivision (e) shall certify under penalty of perjury that the owner has complied with all provisions of this section and Section 65863.10. This certification shall be recorded and shall contain a legal description of the property, shall be indexed to the name of the owner as grantor, and may be relied upon by good faith purchasers and encumbrances for value and without notice of a failure to comply with the provisions of this section.

Any person or entity acting solely in the capacity of an escrow agent for the transfer of real property subject to this section shall not be liable for any failure to comply with this section unless the escrow agent either had actual knowledge of the requirements of this section or acted contrary to written escrow instructions concerning the provisions of this section.

(o) The department shall undertake the following responsibilities and duties:

(1) Maintain a form containing a summary of rights and obligations under this section and make that information available to owners of assisted housing developments as well as to tenant associations, local nonprofit organizations, regional or national nonprofit organizations, public agencies, and other entities with an interest in preserving the state's subsidized housing.

(2) Compile, maintain, and update a list of entities in subdivision (d) that have either contacted the department with an expressed interest in

purchasing a development in the subject area or have been identified by the department as potentially having an interest in participating in a right-of-first-refusal program. The department shall publicize the existence of the list statewide. Upon receipt of a notice of intent under Section 65863.10, the department shall make the list available to the owner proposing the termination, prepayment, or removal of government assistance or to the owner of an assisted housing development in which there will be the expiration of rental restrictions. If the department does not make the list available at any time, the owner shall only be required to send a written copy of the opportunity to submit an offer to purchase notice to the qualified entities which directly contact the owner and to post a copy of the notice in the common area pursuant to subdivision (g).

(p) (1) The provisions of this section may be enforced either in law or in equity by any qualified entity entitled to exercise the opportunity to purchase and right of first refusal under this section, that has been adversely affected by an owner's failure to comply with this section.

(2) An owner may rely on the statements, claims, or representations of any person or entity that the person or entity is a qualified entity as specified in subdivision (d), unless the owner has actual knowledge that the purchaser is not a qualified entity.

(3) If the person or entity is not an entity as specified in subdivision (d), that fact, in the absence of actual knowledge as described in paragraph (2), shall not give rise to any claim against the owner for a violation of this section.

(q) It is the intent of the Legislature that the provisions of this section are in addition to, but not preemptive of, applicable federal laws governing the sale, or other disposition of a development that would result in either (1) a discontinuance of its use as an assisted housing development or (2) the termination or expiration of any low-income use restrictions that apply to the development.

(r) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2011, deletes or extends that date.

SEC. 3. Section 65863.13 of the Government Code is amended to read:

65863.13. (a) An owner shall not be required to provide a notice as required by Section 65863.10 or Section 65863.11 if all of the following conditions are contained in a regulatory agreement that has been recorded against the property:

(1) No low-income tenant whose rent was restricted and or subsidized and who resides in the development within 12 months of the date that the rent restrictions are, or subsidy is, scheduled to expire or terminate

shall be involuntarily displaced on a permanent basis as a result of the action by the owner unless the tenant has breached the terms of the lease.

(2) The owner shall accept and fully utilize all renewals of project-based assistance under Section 8 of the United States Housing Act of 1937, if available, and if that assistance is at a level to maintain the project's fiscal viability. The property shall be deemed fiscally viable if the rents permitted under the terms of the assistance are not less than the regulated rent levels established pursuant to paragraph (7).

(3) The owner shall accept all enhanced Section 8 vouchers, if the tenants receive them, and all other Section 8 vouchers for future vacancies.

(4) The owner shall not terminate a tenancy of a low-income household at the end of a lease term without demonstrating a breach of the lease.

(5) The owner may, in selecting eligible applicants for admission, utilize criteria that permit consideration of the amount of income, as long as the owner adequately considers other factors relevant to an applicant's ability to pay rent.

(6) For housing developments in which only a portion of the units are assisted pursuant to paragraph (3) of subdivision (a) of Section 65863.10, a new regulatory agreement, consistent with this section, is recorded that restricts the rents of the assisted units to an equal or greater level of affordability than under the previously existing agreement so that they are affordable to households at the same or a lower percentage of area median income.

(7) For housing developments that have units with project-based Section 8 assistance upon the effective date of prepayment and subsequently become unassisted by any form of Section 8 assistance, rents shall not exceed 30 percent of 60 percent of the area median income. If any form of Section 8 assistance is or becomes available, the owner shall apply for and accept, if awarded, the Section 8 assistance. Rent and occupancy levels shall then be set in accordance with federal regulations for the Section 8 program.

(8) For unassisted units and units that do not have project-based Section 8 assistance upon the effective date of prepayment of a federally insured, federally held, or formerly federally insured or held mortgage and subsequently remain unassisted or become unassisted by any form of Section 8 assistance, rents shall not exceed the greater of (i) 30 percent of 50 percent of the area median income, or (ii) for projects insured under Section 241(f) of the National Housing Act, the regulated rents, expressed as a percentage of area median income. If any form of Section 8 assistance is or becomes available, the owner shall apply for and accept, if awarded, the Section 8 assistance. Rent and occupancy levels

shall then be set in accordance with federal regulations governing the Section 8 program.

(9) If a previously unassisted unit becomes assisted, as evidenced by the recordation of a regulatory agreement, and is occupied by a non-low-income household at the time of the recordation of the new regulatory agreement, the owner shall qualify for the exemption under this section as long as the owner charges the over-income household a rent that does not exceed 30 percent of the household's gross monthly income until the termination of the tenancy, at which time the rent chargeable for the unit shall be restricted in accordance with applicable regulatory agreements.

(b) As used in this section, ''regulatory agreement'' means an agreement with a governmental agency for the purposes of any governmental program, which agreement applies to the development that would be subject to the notice requirement in Section 65863.10 and which obligates the owner and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for the greater of the term of the existing federal, state, or local government assistance specified in subdivision (a) of Section 65863.10 or 30 years.

(c) Section 65863.11 shall not apply to any development for which the owner is exempt from the notice requirements of Section 65863.10 pursuant to this section.

(d) 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. 4. This act shall become operative on July 1, 2005.

CHAPTER 111

An act to amend Section 2079.10 of the Civil Code, and to amend Section 375.5 of the Water Code, relating to water.

[Approved by Governor July 6, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 2079.10 of the Civil Code is amended to read:

2079.10. (a) If the informational booklet published pursuant to Section 25402.9 of the Public Resources Code, concerning the statewide home energy rating program adopted pursuant to Section 25942 of the Public Resources Code, is delivered to a transferee in connection with

the transfer of real property, including, but not limited to, property specified in Section 1102, manufactured homes as defined in Section 18007 of the Health and Safety Code, and property subject to Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code, the seller or broker is not required to provide information additional to that contained in the booklet concerning home energy ratings, and the information in the booklet shall be deemed to be adequate to inform the transferee about the existence of a statewide home energy rating program.

(b) Notwithstanding subdivision (a), nothing in this section alters any existing duty of the seller or broker under any other law including, but not limited to, the duties of a seller or broker under this article, Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code, or Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code, to disclose information concerning the existence of a home energy rating program affecting the real property.

(c) If the informational booklet or materials described in Section 375.5 of the Water Code concerning water conservation and water conservation programs are delivered to a transferee in connection with the transfer of real property, including property described in subdivision (a), the seller or broker is not required to provide information concerning water conservation and water conservation programs that is additional to that contained in the booklet or materials, and the information in the booklet or materials shall be deemed to be adequate to inform the transferee about water conservation and water conservation programs.

SEC. 2. Section 375.5 of the Water Code is amended to read:

375.5. (a) A public entity, as defined by Section 375, may undertake water conservation and public education programs in conjunction with school districts, public libraries, or any other public entity.

(b) (1) A public entity may undertake water conservation and public education programs using an information booklet or materials for use in connection with the use or transfer of real estate containing up to four residential units. For the purposes of this subdivision, the public entity may use water conservation materials prepared by the department.

(2) It is the intent of the Legislature that on or before December 31, 2007, a review of the program be conducted to obtain information on both of the following matters:

(A) The extent to which public entities have undertaken water conservation and public education programs referred to in paragraph (1).

(B) The extent to which water conservation may be attributable to the implementation of water conservation and public education programs referred to in paragraph (1).

(c) A public entity may take into account any programs undertaken pursuant to this section in a rate structure design implemented pursuant to Section 375.

(d) The Legislature finds and declares that a program undertaken pursuant to this section is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the people of the state.

CHAPTER 112

An act to add Section 47605.2 to the Education Code, relating to charter schools.

[Approved by Governor July 6, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 47605.2 is added to the Education Code, to read:

47605.2. The Delta Charter High School, located in the County of Santa Cruz, is exempt from the geographic and site limitations contained in subdivision (a) of Section 47605.

SEC. 2. The Legislature finds and declares that due to special circumstances surrounding the Delta Charter High School a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.

CHAPTER 113

An act to amend Section 44830 of the Education Code, relating to teachers.

[Approved by Governor July 6, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 44830 of the Education Code is amended to read:

44830. (a) The governing board of a school district shall employ for positions requiring certification qualifications, only persons who

possess the qualifications therefor prescribed by law. It is contrary to the public policy of this state for any person or persons charged, by the governing boards, with the responsibility of recommending persons for employment by the boards to refuse or to fail to do so for reasons of race, color, religious creed, sex, or national origin of the applicants for that employment.

(b) A school district governing board shall not initially hire on a permanent, temporary, or substitute basis a certificated person seeking employment in the capacity designated in his or her credential, unless that person has demonstrated basic skills proficiency as provided in Section 44252.5 or is exempted from the requirement by subdivision (c), (d), (e), (f), (g), (h), (i), (j), (k), (*l*), or (m).

(1) The governing board of a school district, with the authorization of the Commission on Teacher Credentialing, may administer the state basic skills proficiency test required under Sections 44252 and 44252.5.

(2) The superintendent, in conjunction with the commission and local governing boards, shall take steps necessary to ensure the effective implementation of this subdivision.

It is the intent of the Legislature that in effectively implementing this subdivision, school district governing boards shall direct superintendents of schools to prepare for emergencies by developing a pool of qualified emergency substitute teachers. This preparation shall include public notice of the test requirements and of the dates and locations of administrations of the tests. District governing boards shall make special efforts to encourage individuals who are known to be qualified in other respects as substitutes to take the state basic skills proficiency test at its earliest administration.

(3) Demonstration of proficiency in reading, writing, and mathematics by any person pursuant to Section 44252 satisfies the requirements of this subdivision.

(c) (1) A certificated person is not required to take the state basic skills proficiency test if he or she has been employed in a position requiring certification in any school district within 39 months prior to employment with the district or if he or she is a retired certificated employee who meets all of the following requirements:

(A) He or she has taught 15 years or more in a California public school.

(B) He or she has been employed at least five of those 15 years in the same school district that desires to reemploy that person and has been employed as a full-time classroom teacher within the last five years or concurrently enrolls in a teacher refresher course that meets all of the following requirements:

(i) The course is developed and administered by the employing school district.

(ii) The course is aligned with the state content and performance standards for pupils, adopted pursuant to subdivision (a) of Section 60605.

(iii) The course is approved by the local governing board.

(C) He or she has been employed as a classroom teacher or administrator within the last 10 years.

(2) A person holding a valid California credential who has not been employed in a position requiring certification in any school district within 39 months prior to employment and who has not taken the state basic skills proficiency test, but who has passed a basic skills proficiency examination that has been developed and administered by the school district offering that person employment, may be employed by the governing board of that school district on a temporary basis on the condition that he or she will take the state basic skills proficiency test within one year of the date of his or her employment.

(3) A certificated person who is employed for purposes of the class size reduction program set forth in Chapter 6.10 (commencing with Section 52120) of Part 28 is not required to take the state basic skills proficiency test if he or she has been employed in a position requiring certification in any school district within 39 months prior to employment with the district. A person holding a valid California credential who has not been employed in a position requiring certification in any school district within 39 months prior to employment for purposes of the class size reduction program and who has not taken the state basic skills proficiency test may be employed by the governing board of that school district on a temporary basis on the condition that he or she will take the state basic skills proficiency test within one calendar year of the date of his or her employment.

(d) This section does not require a person employed solely for purposes of teaching adults in an apprenticeship program, approved by the Apprenticeship Standards Division of the Department of Industrial Relations, to pass the state proficiency assessment instrument as a condition of employment.

(e) This section does not require the holder of a child care permit or a permit authorizing service in a development center for the handicapped to take the state basic skills proficiency test, so long as the holder of the permit is not required to have a baccalaureate degree.

(f) This section does not require the holder of a credential issued by the commission who seeks an additional credential or authorization to teach, to take the state basic skills proficiency test.

(g) This section does not require the holder of a credential to provide service in the health profession to take the state basic skills proficiency test, if that person does not teach in the public schools.

(h) If the state basic skills proficiency test is not administered at the time of hiring, the holder of a vocational designated subject credential who has not already taken and passed the state basic skills proficiency test may be hired on the condition that he or she will take the test at its next local administration.

(i) If the holder of a vocational designated subject credential does not pass a proficiency assessment in basic skills pursuant to this section, he or she shall be given one year in which to retake and pass the proficiency assessment in basic skills. If at the expiration of the one-year period he or she has not passed the proficiency assessment in basic skills, he or she shall be subject to dismissal under procedures established in Article 3 (commencing with Section 44930).

(j) This section does not require the holder of a vocational designated subject credential to pass the state basic skills proficiency test as a condition of employment. The governing board of each school district, or each governing board of a consortium of school districts, or each governing board involved in a joint powers agreement, which employs the holder of a vocational designated subject credential shall establish its own basic skills proficiency for these credentials and shall arrange for those individuals to be assessed. The basic skills proficiency criteria established by the governing board shall be at least equivalent to the test required by the district, or in the case of a consortium or a joint powers agreement, by any of the participating districts, for graduation from high school. The governing board or boards may charge a fee to individuals being tested to cover the costs of the test, including the costs of developing, administering, and grading the test.

(k) This section does not require the holder of an adult education designated subject credential for other than academic subjects, who is employed in an instructional setting for 20 hours or less per week, to pass the state proficiency assessment as a condition of employment.

(*l*) This section does not require certificated personnel employed under a foreign exchange program to take the state basic skills proficiency test. The maximum period of exemption under this subdivision shall be one year.

(m) Notwithstanding any other law, a school district may hire a certificated teacher who has not taken the state basic skills proficiency test if that person has not yet been afforded the opportunity to take the test. The person shall take the test at the earliest opportunity and may remain employed by the district pending the receipt of his or her test results.

CHAPTER 114

An act to add Article 7.4 (commencing with Section 53835) to Chapter 4 of Part 1 of Division 2 of the Government Code, relating to special district indebtedness.

[Approved by Governor July 6, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Article 7.4 (commencing with Section 53835) is added to Chapter 4 of Part 1 of Division 2 of the Government Code, to read:

Article 7.4. Securitized Limited Obligations Notes

53835. As used in this article, ''special district'' means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. ''Special district'' does not include any agency subject to Section 18 of Article XVI of the California Constitution, including any city, county, school district, or community college district, or any community redevelopment agency.

53836. The powers conferred by this article are in addition to and alternative to any powers conferred by any other law for borrowing by a special district and any amount borrowed pursuant to this article shall not be considered in any limitation on the amount that may be borrowed by a special district under any other law.

53837. (a) A special district may borrow money pursuant to this article, the indebtedness to be represented by a securitized limited obligation note or notes issued to the lender pursuant to this article.

(b) The money borrowed may be used and expended by the special district solely for the acquisition or improvement of land, facilities, or equipment.

(c) Any note issued pursuant to this article shall be exempt from all taxation within the state.

53838. (a) A special district may issue securitized limited obligation notes after the adoption, by a four-fifths vote of all the members of the governing body, of a resolution reciting each of the following:

(1) That the resolution is being adopted pursuant to this subdivision.

(2) The purposes of incurring the indebtedness, and that the indebtedness shall be used solely for those purposes.

(3) The estimated amount of the indebtedness.

(4) The maximum amount of notes to be issued, and the source of revenue or revenues to be used to secure the limited obligation notes.

(5) The maturity date of the securitized limited obligation notes.

(6) The form of the securitized limited obligation notes.

(7) The manner of execution of the securitized limited obligation notes.

(b) The resolution may also provide for any of the following matters:

(1) Insurance for the securitized limited obligation notes.

(2) A schedule for the completion of the purposes for which the indebtedness was incurred.

(3) Procedures in the event of default, terms upon which the securitized limited obligation notes may be declared due before maturity, and the terms upon which that declaration may be waived.

(4) The rights, liabilities, powers, and duties arising upon the special district's breach of any agreement with regard to the securitized limited obligation notes.

(5) The terms upon which the holders of the securitized limited obligation notes may enforce agreements authorized by this section.

(6) A procedure for amending or abrogating the terms of the resolution with the consent of the holders of a specified percentage of the securitized limited obligation notes. If the resolution contains this procedure, the resolution shall specifically state the effect of amendment upon the rights of the holders of all of the securitized limited obligation notes.

(7) The manner in which the holders of the securitized limited obligation notes may take action.

(8) Other actions necessary or desirable to secure the securitized limited obligation notes or tending to make the notes more marketable.

(c) The securitized limited obligation notes shall bear interest at a rate not exceeding the rate permitted under Article 7 (commencing with Section 53530) of Chapter 3.

(d) The securitized limited obligation notes may not mature later than 10 years after the date of the issuance of the notes.

(e) The total amount of the securitized limited obligation notes outstanding at any one time within a special district may not exceed the sum of two million dollars ($2,000,000).

(f) The agreement between the special district and the purchasers of the securitized limited obligation notes shall state that the notes are securitized limited obligation notes payable solely from specified revenue of the special district. The pledged revenue shall be sufficient to pay the following amounts annually, as they become due and payable:

(1) The interest and principal on the notes.

(2) All payments required for compliance with the resolution authorizing issuance of the notes or agreements with the purchasers of the notes.

(3) All payments to meet any other obligations of the special district that are charges, liens, or encumbrances on the pledged revenue.

(g) The securitized limited obligation notes are special obligations of the special district, and shall be a charge against, and secured by a lien upon, and payable, as to the principal thereof and interest thereon, from the pledged revenue. If the revenue described in the authorizing resolution is insufficient for the payment of interest and principal on the notes, the special district may make payments from any other funds or revenues that may be applied to their payment. The revenue and any interest earned on the revenue constitute a trust fund for the security and payment of the interest on and principal of the notes.

(h) So long as any securitized limited obligation notes or interest thereon are unpaid following their maturity, the pledged revenue and interest thereon may not be used for any other purpose.

(i) If the interest and principal on the securitized limited obligation notes and all charges to protect them are paid when due, the special district may expend the pledged revenue for other purposes.

(j) Securitized limited obligation notes of the same issue shall be equally secured.

(k) The general funds of the state and the special district are not liable for the payment of the principal of, or the interest on, the securitized limited obligation notes.

(*l*) The holders of the securitized limited obligation notes may not compel the exercise of the taxing power by the special district, other than the revenue pledged, or the forfeiture of the special district's property.

(m) Every agreement shall recite in substance that the principal of, and interest on, the securitized limited obligation notes are payable solely from the revenue pledged to the payment of the principal and interest and that the special district is not obligated to pay the principal or interest except from the pledged revenue.

53839. A special district shall not issue any securitized limited obligation notes after December 31, 2009, unless a later enacted statute that is enacted before December 31, 2009, deletes or extends that date.

CHAPTER 115

An act to amend Section 422.6 of the Penal Code, relating to rights.

[Approved by Governor July 6, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 422.6 of the Penal Code is amended to read:

422.6. (a) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

(b) No person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

(c) Any person convicted of violating subdivision (a) or (b) shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. However, no person may be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat.

(d) Conduct that violates this and any other provision of law, including, but not limited to, an offense described in Article 4.5 (commencing with Section 11410) Chapter 3 of Title 1 of Part 4, may be charged under all applicable provisions. However, an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision, and the penalty to be imposed shall be determined as set forth in Section 654.

———

CHAPTER 116

An act to amend Section 1109 of the Evidence Code, relating to domestic violence.

[Approved by Governor July 6, 2004. Filed with Secretary of State July 6, 2004.]

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

SECTION 1. Section 1109 of the Evidence Code is amended to read:

1109. (a) (1) Except as provided in subdivision (e) or (f), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other domestic violence is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352.

(2) Except as provided in subdivision (e) or (f), in a criminal action in which the defendant is accused of an offense involving abuse of an elder or dependent adult, evidence of the defendant's commission of other abuse of an elder or dependent adult is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352.

(b) In an action in which evidence is to be offered under this section, the people shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, in compliance with the provisions of Section 1054.7 of the Penal Code.

(c) This section shall not be construed to limit or preclude the admission or consideration of evidence under any other statute or case law.

(d) As used in this section, ''domestic violence'' has the meaning set forth in Section 13700 of the Penal Code. Subject to a hearing conducted pursuant to Section 352, which shall include consideration of any corroboration and remoteness in time, ''domestic violence'' has the further meaning as set forth in Section 6211 of the Family Code if the act occurred no more than five years before the charged offense. ''Abuse of an elder or a dependent adult'' has the meaning set forth in Section 15610.07 of the Welfare and Institutions Code.

(e) Evidence of acts occurring more than 10 years before the charged offense is inadmissible under this section, unless the court determines that the admission of this evidence is in the interest of justice.

(f) Evidence of the findings and determinations of administrative agencies regulating the conduct of health facilities licensed under

Section 1250 of the Health and Safety Code is inadmissible under this section.

CHAPTER 117

An act to amend Sections 2620 and 2622 of the Business and Professions Code, relating to physical therapy.

[Approved by Governor July 6, 2004. Filed with Secretary of State July 7, 2004.]

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

SECTION 1. Section 2620 of the Business and Professions Code is amended to read:

2620. (a) Physical therapy means the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services. The practice of physical therapy includes the promotion and maintenance of physical fitness to enhance the bodily movement related health and wellness of individuals through the use of physical therapy interventions. The use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term ''physical therapy'' as used in this chapter, and a license issued pursuant to this chapter does not authorize the diagnosis of disease.

(b) Nothing in this section shall be construed to restrict or prohibit other healing arts practitioners licensed or registered under this division from practice within the scope of their license or registration.

SEC. 2. Section 2622 of the Business and Professions Code is amended to read:

2622. ''Physical therapist'' and ''physical therapist technician'' mean a person who is licensed pursuant to this chapter to practice physical therapy. For purposes of this chapter, the term ''physical therapy'' and ''physiotherapy'' shall be deemed identical and interchangeable.

SEC. 3. It is the intent of the Legislature that this act apply only to the practice of physical therapy as engaged in by licensed physical therapists.

CHAPTER 118

An act to amend Section 17924 of the Business and Professions Code, to amend Sections 6253, 6293.5, 30801, 30803, 30805, and 30850 of, and to repeal Section 30806 of, the Food and Agricultural Code, to amend Sections 24003, 25151, 25502.3, 26806, 26859, 51238.2, 53601.7, 53630, 54222, 55631, 66452.6, and 66473.7 of, to add Sections 50057 and 53601.2 to, and to repeal Section 26835 of, the Government Code, to repeal Section 1184 of the Military and Veterans Code, to amend Sections 11534, 11910, and 22553.2 of the Public Utilities Code, to amend Sections 34701 and 60622 of the Water Code, and to amend Section 16809.4 of the Welfare and Institutions Code, relating to local government.

[Approved by Governor July 7, 2004. Filed with Secretary of State July 7, 2004.]

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

SECTION 1. (a) This act shall be known and may be cited as the Local Government Omnibus Act of 2004.

(b) The Legislature finds and declares that Californians desire their government to be run efficiently and economically and that public officials should avoid waste and duplication wherever possible. The Legislature further finds and declares that it desires to control its own operating costs by reducing the number of separate bills. Therefore, it is the intent of the Legislature in enacting this act to combine several minor, noncontroversial statutory changes relating to local government into a single measure.

SEC. 2. Section 17924 of the Business and Professions Code is amended to read:

17924. (a) The county clerk shall furnish without charge a form satisfying the requirements of subdivision (a) of Section 17913. The form prepared by the county clerk, or the material provided by him with the form, shall include statements substantially as follows:

(1) ''Your fictitious business name statement must be published in a newspaper once a week for four successive weeks and an affidavit of publication filed with the county clerk when publication has been

accomplished. The statement should be published in a newspaper of general circulation in the county where the principal place of business is located. The statement should be published in such county in a newspaper that circulates in the area where the business is to be conducted (Business and Professions Code Section 17917).''

(2) ''Any person who executes, files, or publishes any fictitious business name statement, knowing that such statement is false, in whole or in part, is guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed one thousand dollars ($1,000) (Business and Professions Code Section 17930).''

These statements do not constitute a part of the fictitious business name statement and are not required to be published pursuant to Section 17917.

(b) The county clerk may furnish without charge forms meeting the requirements for a statement of abandonment of use of a fictitious business name and a statement of withdrawal from partnership operating under a fictitious business name.

SEC. 3. Section 6253 of the Food and Agricultural Code is amended to read:

6253. (a) The board shall, on or before the first Monday in April of each year, file with the board of supervisors a budget that sets forth all estimated expenditures of the district for the fiscal year commencing on the first day of July. A copy of the budget shall also, at the same time, be filed with the auditor of the county.

(b) The board of supervisors may, by ordinance or by resolution, adopted after notice and hearing, determine and levy an assessment for winegrape pest and disease control activities for any of the following purposes:

(1) Responding to, managing, and controlling the effects of the spread of the phylloxera pest and other pests that attack winegrape plants.

(2) Collecting and disseminating to winegrape producers in the district all relevant information and scientific studies concerning the pest or pests.

(3) Charting and determining the extent and location of any infestations.

(c) The annual assessment shall not exceed five dollars ($5) per planted acre.

(d) The board of supervisors shall cause to be prepared and filed with the clerk of the board of supervisors a written report that contains all of the following information:

(1) A description of each parcel of property proposed to be subject to the assessment.

(2) The amount of the assessment of each parcel for the initial fiscal year.

(3) The maximum amount of the assessment that may be levied for each parcel during any fiscal year.

(4) The duration of the assessment.

(5) The basis of the assessment.

(6) The schedule of the assessment.

(7) A description specifying the requirements for written and oral protests, and the protest threshold necessary for requiring abandonment of the proposed assessment pursuant to subdivision (f).

(e) (1) The board may establish zones or areas of benefit within the district, and may restrict the imposition of assessments to areas lying within one or more of the zones or areas of benefit established within the district.

(2) The assessment shall be levied on each parcel within the boundaries of the district, zone, or area of benefit.

(f) (1) The board of supervisors shall comply with the notice, protest, and hearing procedures in Section 53753 of the Government Code.

(2) In addition, the mailed notice shall include the name of the district, the return address of the sender, the amount of the assessment for the initial fiscal year, the maximum amount of the assessment that may be levied during any fiscal year and the name and telephone number of the person designated by the board of supervisors to answer inquiries regarding the protest proceedings.

SEC. 4. Section 6293.5 of the Food and Agricultural Code is amended to read:

6293.5. (a) The board of supervisors shall fix a time and place for the hearing of the petition.

(b) The hearing shall not be less than 20 days, or more than 40 days, after the filing of the petition with the board of supervisors.

(c) The board of supervisors shall order the clerk of the board of supervisors to give notice of the time and place fixed for the hearing upon the petition.

SEC. 5. Section 30801 of the Food and Agricultural Code is amended to read:

30801. (a) A board of supervisors may provide for the issuance of serially numbered metallic dog licenses pursuant to this section. The dog licenses shall be stamped with the name of the county and the year of issue.

(b) The board of supervisors or animal control department may authorize veterinarians to issue the licenses to owners of dogs that make application.

(c) The licenses shall be issued for a period of not to exceed two years.

(d) In addition to the authority provided in subdivisions (a), (b), and (c), a license may be issued, as provided by this section, by a board of supervisors for a period not to exceed three years for dogs that have attained the age of 12 months, or older, and who have been vaccinated against rabies. The person to whom the license is to be issued pursuant to this subdivision may choose a license period as established by the board of supervisors of up to one, two, or three years. However, when issuing a license pursuant to this subdivision, the license period shall not extend beyond the remaining period of validity for the current rabies vaccination.

SEC. 6. Section 30803 of the Food and Agricultural Code is amended to read:

30803. (a) The animal control department shall endorse upon the application for a dog license tag the number of the license tag issued.

(b) All applications that have been endorsed shall be kept on file in the office of the animal control department open to public inspection.

SEC. 7. Section 30805 of the Food and Agricultural Code is amended to read:

30805. The board of supervisors shall fix the compensation of the animal control department for issuing dog license tags.

SEC. 8. Section 30806 of the Food and Agricultural Code is repealed.

SEC. 9. Section 30850 of the Food and Agricultural Code is amended to read:

30850. (a) The animal control department shall endorse upon the application for an assistance dog identification tag the number of the identification tag issued. As used in this chapter, ''assistance dogs'' are dogs specially trained as guide dogs, signal dogs, or service dogs. All applications that have been endorsed shall be kept on file in the office of the animal control department and shall be open to public inspection.

(b) Whenever a person applies for an assistance dog identification tag, the person shall sign an affidavit stating as follows:

''By affixing my signature to this affidavit, I hereby declare I fully understand that Section 365.7 of the Penal Code prohibits any person to knowingly and fraudulently represent himself or herself, through verbal or written notice, to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide dog, signal dog, or service dog, as defined in subdivisions (d), (e), and (f), respectively, of Section 365.5 of the Penal Code and paragraph (6) of subdivision (b) of Section 54.1 of the Civil Code, and that a violation of Section 365.7 of the Penal Code is a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.''

(c) Upon the death or retirement of an assistance dog, the owner or person in possession of the assistance dog identification tag shall immediately return the tag to the animal control department that issued the tag.

SEC. 10. Section 24003 of the Government Code is amended to read:

24003. The county veterinarian shall at the time of his or her appointment be a qualified veterinary surgeon having a certificate issued to him or her by the Veterinary Medical Board.

SEC. 11. Section 25151 of the Government Code is amended to read:

25151. (a) All public notices of proceedings of or to be had before the board, not otherwise specifically provided for, shall be posted at the meeting place of the board in a location that is freely accessible to the public.

(b) In addition to the posting required by subdivision (a), the clerk of the board of supervisors shall either post the notice of the proceedings at two public places in the county other than the location of the meeting, or post the notice of the proceedings in an electronic format on a Web site provided by the county.

SEC. 12. 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 Consumer Price Index as determined pursuant to Section 2212 of the Revenue and Taxation Code.

SEC. 13. Section 26806 of the Government Code is amended to read:

26806. (a) In counties having a population of 900,000 or over, the clerk of the court may employ as many foreign language interpreters as may be necessary to interpret in criminal cases in the superior court, and in the juvenile court within the county and to translate documents intended for filing in any civil or criminal action or proceeding or for recordation in the county recorder's office.

(b) The clerk of the superior court, shall, when interpreters are needed, assign the interpreters so employed to interpret in criminal and juvenile cases in the superior court. When their services are needed, the clerk shall also assign interpreters so employed to interpret in criminal cases in municipal courts.

(c) The clerk of the court may also assign the interpreters so employed to interpret in civil cases in superior and municipal courts when their services are not required in criminal or juvenile cases and when so assigned, they shall collect from the litigants the fee fixed by the court and shall deposit the same in the county treasury.

(d) The interpreters so employed shall, when assigned to do so by the clerk of the court, translate documents to be recorded or to be filed in any civil or criminal action or proceeding. The fee to be collected for translating each such document shall be three dollars ($3) per folio for the first folio or part thereof, and two cents ($0.02) for each word thereafter. For preparing a carbon copy of such translation made at the time of preparing the original, the fee shall be twelve cents ($0.12) per folio or any part thereof. All such fees shall be deposited in the county treasury.

SEC. 14. Section 26835 of the Government Code is repealed.

SEC. 15. Section 26859 of the Government Code is amended to read:

26859. At the time of filing of each initial petition for dissolution of marriage, legal separation, or nullity, the petitioner shall pay a fee of two dollars ($2) to the clerk of the court for the costs of complying with Chapter 10 (commencing with Section 103200) of Part 1 of Division 102 of the Health and Safety Code.

The clerk of the court shall pay one-half of all those fees to the State Registrar of Vital Statistics each month. The State Registrar shall transmit those sums to the Treasurer for deposit in the General Fund.

SEC. 16. Section 50057 is added to the Government Code, to read:

50057. For individual items in the amount of one thousand dollars ($1,000) or less, the legislative body of any county may, by resolution, authorize the county treasurer to perform on its behalf any act required or authorized to be performed by it under Sections 50050, 50053, and 50055. The resolution shall require that the county auditor be informed of each act performed under the authorization.

SEC. 17. Section 51238.2 of the Government Code is amended to read:

51238.2. Mineral extraction that is unable to meet the principles of Section 51238.1 may nevertheless be approved as compatible use if the board or council is able to document that (a) the underlying contractual commitment to preserve prime agricultural land, as defined in subdivision (c) of Section 51201, or (b) the underlying contractual commitment to preserve land that is not prime agricultural land for open-space use, as defined in subdivision (o) of Section 51201, will not be significantly impaired.

Conditions imposed on mineral extraction as a compatible use of contracted land shall include compliance with the reclamation standards

adopted by the Mining and Geology Board pursuant to Section 2773 of the Public Resources Code, including the applicable performance standards for prime agricultural land and other agricultural land, and no exception to these standards may be permitted.

For purposes of this section, ''contracted land'' means all land under a single contract for which an applicant seeks a compatible use permit.

SEC. 18. Section 53601.2 is added to the Government Code, to read:

53601.2. As used in this article, ''corporation'' includes a limited liability company.

SEC. 19. Section 53601.7 of the Government Code is amended to read:

53601.7. Notwithstanding the investment parameters of Sections 53601 and 53635, a local agency that is a county or a city and county may invest any portion of the funds that it deems wise or expedient, using the following criteria:

(a) No investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or a securities lending agreement, that, at the time of purchase, has a term remaining to maturity in excess of 397 days, and that would cause the dollar-weighted average maturity of the funds in the investment pool to exceed 90 days.

(b) All corporate and depository institution investments shall meet or exceed the following credit rating criteria at time of purchase:

(1) Short-term debt shall be rated at least ''A-1'' by Standard & Poor's Corporation, ''P-1'' by Moody's Investors Service, Inc., or ''F-1'' by Fitch Ratings. If the issuer of short-term debt has also issued long-term debt, this long-term debt rating shall be rated at least ''A,'' without regard to +/- or 1, 2, 3 modifiers, by Standard & Poor's Corporation, Moody's Investors Service, Inc., or Fitch Ratings.

(2) Long-term debt shall be rated at least ''A,'' without regard to +/- or 1, 2, 3 modifiers, by Standard & Poor's Corporation, Moody's Investors Service, Inc., or Fitch Ratings.

(c) No more than 5 percent of the total assets of the investments held by a local agency may be invested in the securities of any one issuer, except the obligations of the United States government, United States government agencies, and United States government-sponsored enterprises. No more than 10 percent may be invested in any one mutual fund.

(d) Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. A later increase or decrease in a percentage resulting from a change in values or assets shall not constitute a violation of that restriction. If subsequent to purchase, securities are downgraded below the minimum acceptable rating level, the securities shall be

reviewed for possible sale within a reasonable amount of time after the downgrade.

(e) Within the limitations set forth in this section, a local agency electing to invest its funds pursuant to this section may invest in the following securities:

(1) Direct obligations of the United States Treasury or any other obligation guaranteed as to principal and interest by the United States government.

(2) Bonds, notes, debentures, or any other obligations of, or securities issued by, any federal government agency, instrumentality, or government-sponsored enterprise.

(3) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or other entity of the state.

(4) Bonds, notes, warrants, or other indebtedness of the local agency, or any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(5) Bankers acceptance, otherwise known as bills of exchange or time drafts drawn on and accepted by a commercial bank, primarily used to finance international trade. Purchases of bankers acceptances may not exceed 180 days to maturity.

(6) Short-term unsecured promissory notes issued by corporations for maturities of 270 days or less. Eligible commercial paper is further limited to the following:

(A) Issuing corporations that are organized and operating within the United States, having total assets in excess of five hundred million dollars ($500,000,000).

(B) Maturities for eligible commercial paper that may not exceed 270 days and may not represent more than 10 percent of the outstanding paper of an issuing corporation.

(7) A certificate representing a deposit of funds at a commercial bank for a specified period of time and for a specified return at maturity. Eligible certificates of deposit shall be issued by a nationally or state-chartered bank or a state or federal association, as defined in Section 5102 of the Financial Code, or by a state-licensed branch of a foreign bank. For purposes of this subdivision, certificates of deposits shall not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money may not invest local agency funds, or funds in the custody of the local

agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or any person with investment decisionmaking authority in the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, other credit committee or the supervisory committee of the state or federal credit union issuing the negotiable certificate of deposit.

(8) Repurchase agreements, reverse repurchase agreements, or securities lending agreements of any securities authorized by this section, if the agreements meet the requirements of this paragraph and the delivery requirements specified in Section 53601. Investments in repurchase agreements may be made, on any investment authorized by this section, when the term of the agreement does not exceed one year. The market value of the securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities, and the value shall be adjusted no less than quarterly. Because the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance with this section if the value of the underlying securities is brought back to 102 percent no later than the next business day. Reverse repurchase agreements may be utilized only when all of the following criteria are met:

(A) The security being sold on reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to the sale.

(B) The total of all reverse repurchase agreements on investments owned by the local agency not purchased or committed to purchase does not exceed 20 percent of the market value of the portfolio.

(C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.

(D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement, may not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or

securities lending agreement and the final maturity date of the same security.

(E) Investments in reverse repurchase agreements or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security, shall only be made with prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

''Securities,'' for purposes of this paragraph, means securities of the same issuer, description, issue date, and maturity.

(9) All debt securities issued by a corporation or depository institution with a remaining maturity of not more than 397 days, including securities specified as ''medium-term notes,'' as well as other debt instruments originally issued with maturities longer than 397 days, but which, at time of purchase, have a final maturity of 397 days or less. Eligible medium-term notes shall be issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States.

(10) (A) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations described in this subdivision and that comply with the investment restrictions of this section. However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement shall not be required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default. The value of the securities underlying a repurchase agreement may be 100 percent of the sales price if the securities are marked to market daily.

(B) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(C) All shares of beneficial interest described in this paragraph shall have met either of the following criteria:

(i) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(ii) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission and who has not less than five years' experience investing in money market instruments and with assets under management in excess of five hundred million dollars ($500,000,000).

(11) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other paythrough bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond.

Securities eligible for investment under this paragraph shall be issued by an issuer having an ''A'' or higher rating from the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of ''AA'' or its equivalent or better by a nationally recognized rating.

(12) Contracts issued by insurance companies that provide the policyholder with the right to receive a fixed or variable rate of interest and the full return of principal at the maturity date.

(13) Any investments that would qualify under SEC Rule 2a-7 of the Investment Company Act of 1940 guidelines. These investments shall also meet the limitations detailed in this section.

(f) For purposes of this section, all of the following definitions shall apply:

(1) ''Repurchase agreement'' means a purchase of securities pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement.

(2) ''Significant banking relationship'' means any of the following activities of a bank:

(A) Involvement in the creation, sale, purchase, or retirement of a local agency's bands, warrants, notes, or other evidence of indebtedness.

(B) Financing of a local agency's securities or funds as deposits.

(C) Acceptance of a local agency's securities or funds as deposits.

(3) ''Reverse repurchase agreement'' means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(4) ''Securities lending agreement'' means an agreement with a local agency that agrees to transfer securities to a borrower who, in turn agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(5) ''Local agency'' means a county or city and county.

(g) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, or other similar borrowing methods.

(h) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(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. 19.7. Section 53630 of the Government Code is amended to read:

53630. As used in this article:

(a) ''Local agency'' means county, city, city and county, including a chartered city or county, a community college district, or other public agency or corporation in this state.

(b) ''Treasurer'' means treasurer of the local agency.

(c) ''Depository'' means a state or national bank, savings association or federal association, a state or federal credit union, or a federally insured industrial loan company, in this state in which the moneys of a local agency are deposited.

(d) ''Agent of depository'' means a trust company or trust department of a state or national bank located in this state, including the trust department of a depository where authorized, and the Federal Home Loan Bank of San Francisco, which is authorized to act as an agent of depository for the purposes of this article pursuant to Section 53657.

(e) ''Security'' means any of the eligible securities or obligations listed in Section 53651.

(f) ''Pooled securities'' means eligible securities held by an agent of depository for a depository and securing deposits of one or more local agencies.

(g) ''Administrator'' means the Administrator of Local Agency Security of the State of California.

(h) ''Savings association or federal association'' means a savings association, savings and loan association, or savings bank as defined by Section 5102 of the Financial Code.

(i) ''Federally insured industrial loan company'' means an industrial loan company licensed under Division 7 (commencing with Section 18000) of the Financial Code, the investment certificates of which are insured by the Federal Deposit Insurance Corporation.

(j) ''Corporation'' includes a limited liability company.

SEC. 20. 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) 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.

SEC. 21. Section 55631 of the Government Code is amended to read:

55631. As used in this article, ''local agency'' means a neighboring city, county, fire protection district, joint powers authority that provides

fire protection services, police protection district, federal government or any federal department or agency.

SEC. 22. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months. However, if the subdivider is required to expend one hundred seventy-eight thousand dollars ($178,000) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way which abut the boundary of the property to be subdivided and which are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 36 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) Commencing January 1, 2005, and each calendar year thereafter, the amount of one hundred seventy-eight thousand dollars ($178,000) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) ''Public improvements,'' as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency which approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of five years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Prior to the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until

the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies which regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action prior to expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency which owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency which owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency which owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

SEC. 23. Section 66473.7 of the Government Code is amended to read:

66473.7. (a) For the purposes of this section, the following definitions apply:

(1) ''Subdivision'' means a proposed residential development of more than 500 dwelling units, except that for a public water system that has fewer than 5,000 service connections, ''subdivision'' means any proposed residential development that would account for an increase of 10 percent or more in the number of the public water system's existing service connections.

(2) ''Sufficient water supply'' means the total water supplies available during normal, single-dry, and multiple-dry years within a 20-year projection that will meet the projected demand associated with the proposed subdivision, in addition to existing and planned future uses, including, but not limited to, agricultural and industrial uses. In determining ''sufficient water supply,'' all of the following factors shall be considered:

(A) The availability of water supplies over a historical record of at least 20 years.

(B) The applicability of an urban water shortage contingency analysis prepared pursuant to Section 10632 of the Water Code that includes actions to be undertaken by the public water system in response to water supply shortages.

(C) The reduction in water supply allocated to a specific water use sector pursuant to a resolution or ordinance adopted, or a contract entered into, by the public water system, as long as that resolution, ordinance, or contract does not conflict with Section 354 of the Water Code.

(D) The amount of water that the water supplier can reasonably rely on receiving from other water supply projects, such as conjunctive use, reclaimed water, water conservation, and water transfer, including programs identified under federal, state, and local water initiatives such as CALFED and Colorado River tentative agreements, to the extent that these water supplies meet the criteria of subdivision (d).

(3) ''Public water system'' means the water supplier that is, or may become as a result of servicing the subdivision included in a tentative map pursuant to subdivision (b), a public water system, as defined in Section 10912 of the Water Code, that may supply water for a subdivision.

(b) (1) The legislative body of a city or county or the advisory agency, to the extent that it is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, shall include as a condition in any tentative map that includes a subdivision a requirement that a sufficient water supply shall be available. Proof of the

availability of a sufficient water supply shall be requested by the subdivision applicant or local agency, at the discretion of the local agency, and shall be based on written verification from the applicable public water system within 90 days of a request.

(2) If the public water system fails to deliver the written verification as required by this section, the local agency or any other interested party may seek a writ of mandamus to compel the public water system to comply.

(3) If the written verification provided by the applicable public water system indicates that the public water system is unable to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivision, then the local agency may make a finding, after consideration of the written verification by the applicable public water system, that additional water supplies not accounted for by the public water system are, or will be, available prior to completion of the subdivision that will satisfy the requirements of this section. This finding shall be made on the record and supported by substantial evidence.

(4) If the written verification is not provided by the public water system, notwithstanding the local agency or other interested party securing a writ of mandamus to compel compliance with this section, then the local agency may make a finding that sufficient water supplies are, or will be, available prior to completion of the subdivision that will satisfy the requirements of this section. This finding shall be made on the record and supported by substantial evidence.

(c) The applicable public water system's written verification of its ability or inability to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivision as required by subdivision (b) shall be supported by substantial evidence. The substantial evidence may include, but is not limited to, any of the following:

(1) The public water system's most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code.

(2) A water supply assessment that was completed pursuant to Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code.

(3) Other information relating to the sufficiency of the water supply that contains analytical information that is substantially similar to the assessment required by Section 10635 of the Water Code.

(d) When the written verification pursuant to subdivision (b) relies on projected water supplies that are not currently available to the public water system, to provide a sufficient water supply to the subdivision, the written verification as to those projected water supplies shall be based on all of the following elements, to the extent each is applicable:

(1) Written contracts or other proof of valid rights to the identified water supply that identify the terms and conditions under which the water will be available to serve the proposed subdivision.

(2) Copies of a capital outlay program for financing the delivery of a sufficient water supply that has been adopted by the applicable governing body.

(3) Securing of applicable federal, state, and local permits for construction of necessary infrastructure associated with supplying a sufficient water supply.

(4) Any necessary regulatory approvals that are required in order to be able to convey or deliver a sufficient water supply to the subdivision.

(e) If there is no public water system, the local agency shall make a written finding of sufficient water supply based on the evidentiary requirements of subdivisions (c) and (d) and identify the mechanism for providing water to the subdivision.

(f) In making any findings or determinations under this section, a local agency, or designated advisory agency, may work in conjunction with the project applicant and the public water system to secure water supplies sufficient to satisfy the demands of the proposed subdivision. If the local agency secures water supplies pursuant to this subdivision, which supplies are acceptable to and approved by the governing body of the public water system as suitable for delivery to customers, it shall work in conjunction with the public water system to implement a plan to deliver that water supply to satisfy the long-term demands of the proposed subdivision.

(g) The written verification prepared under this section shall also include a description, to the extent that data is reasonably available based on published records maintained by federal and state agencies, and public records of local agencies, of the reasonably foreseeable impacts of the proposed subdivision on the availability of water resources for agricultural and industrial uses within the public water system's service area that are not currently receiving water from the public water system but are utilizing the same sources of water. To the extent that those reasonably foreseeable impacts have previously been evaluated in a document prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or the National Environmental Policy Act (Public Law 91-190) for the proposed subdivision, the public water system may utilize that information in preparing the written verification.

(h) Where a water supply for a proposed subdivision includes groundwater, the public water system serving the proposed subdivision shall evaluate, based on substantial evidence, the extent to which it or the landowner has the right to extract the additional groundwater needed

to supply the proposed subdivision. Nothing in this subdivision is intended to modify state law with regard to groundwater rights.

(i) This section shall not apply to any residential project proposed for a site that is within an urbanized area and has been previously developed for urban uses, or where the immediate contiguous properties surrounding the residential project site are, or previously have been, developed for urban uses, or housing projects that are exclusively for very low and low-income households.

(j) The determinations made pursuant to this section shall be consistent with the obligation of a public water system to grant a priority for the provision of available and future water resources or services to proposed housing developments that help meet the city's or county's share of the regional housing needs for lower income households, pursuant to Section 65589.7.

(k) The County of San Diego shall be deemed to comply with this section if the Office of Planning and Research determines that all of the following conditions have been met:

(1) A regional growth management strategy that provides for a comprehensive regional strategy and a coordinated economic development and growth management program has been developed pursuant to Proposition C as approved by the voters of the County of San Diego in November 1988, which required the development of a regional growth management plan and directed the establishment of a regional planning and growth management review board.

(2) Each public water system, as defined in Section 10912 of the Water Code, within the County of San Diego has adopted an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) of the Water Code.

(3) The approval or conditional approval of tentative maps for subdivisions, as defined in this section, by the County of San Diego and the cities within the county requires written communications to be made by the public water system to the city or county, in a format and with content that is substantially similar to the requirements contained in this section, with regard to the availability of a sufficient water supply, or the reliance on projected water supplies to provide a sufficient water supply, for a proposed subdivision.

(*l*) Nothing in this section shall preclude the legislative body of a city or county, or the designated advisory agency, at the request of the applicant, from making the determinations required in this section earlier than required pursuant to subdivision (b).

(m) Nothing in this section shall be construed to create a right or entitlement to water service or any specific level of water service.

(n) Nothing in this section is intended to change existing law concerning a public water system's obligation to provide water service to its existing customers or to any potential future customers.

(o) Any action challenging the sufficiency of the public water system's written verification of a sufficient water supply shall be governed by Section 66499.37.

SEC. 24. Section 1184 of the Military and Veterans Code is repealed.

SEC. 25. Section 11534 of the Public Utilities Code is amended to read:

11534. Except as otherwise provided in this division all ordinances, summaries of ordinances, and notices that are required to be published shall be published once a week for two successive weeks (two publications) in a newspaper of general circulation published within the district.

SEC. 26. Section 11910 of the Public Utilities Code is amended to read:

11910. (a) No ordinance shall be passed by the board within five days of the day of its introduction or at any time other than a regular or adjourned regular meeting. All ordinances or summaries of ordinances shall be published after passage.

(b) The publication of ordinances, as required by subdivision (a), may be satisfied by either of the following actions:

(1) Within 15 days after adoption of the ordinance or amendment to an ordinance, the board of directors shall publish a summary of the ordinance or amendment with the names of those directors voting for and against the ordinance or amendment and the secretary shall post in the office of the secretary of the board of directors a certified copy of the full text of the adopted ordinance or amendment along with the names of those directors voting for and against the ordinance or amendment.

(2) If the general manager determines that it is not feasible to prepare a fair and adequate summary of the adopted ordinance or amendment, and if the board of directors so orders, within 15 days after adoption of the ordinance or amendment to an ordinance, a display advertisement of at least one-quarter of a page shall be published. The advertisement shall indicate the general nature of, and provide information about, the proposed or adopted ordinance or amendment, including information sufficient to enable the public to obtain copies of the complete text of the ordinance or amendment, and the names of those directors voting for and against the ordinance or amendment.

SEC. 26.5. Section 22553.2 of the Public Utilities Code is amended to read:

22553.2. No district may exercise any of the authority granted under this part for the development of spaceports unless it has been designated as a spaceport pursuant to Section 13999.3 of the Government Code.

SEC. 27. Section 34701 of the Water Code is amended to read:

34701. Officers take office as soon as they qualify except that officers elected or appointed pursuant to the Uniform District Election Law shall take office at noon on the first Friday in December next following the general district election.

SEC. 28. Section 60622 of the Water Code is amended to read:

60622. (a) All contracts and other documents executed by the district that require or authorize the district to expend ten thousand dollars ($10,000) or more shall be authorized by the board of directors and signed by the president and the secretary except that the board may, by resolution for a specific expenditure, authorize the district manager or other district representative to sign contracts and other documents in the name of the district, not to exceed twenty-five thousand dollars ($25,000).

(b) All contracts and other documents executed by the district that require or authorize the district to expend less than ten thousand dollars ($10,000) may be approved and signed by the district manager or other district representative authorized by the board of directors, provided, however, that the manager may not execute multiple contracts or documents on behalf of the district with the same person or entity within a one-year period that cumulatively total ten thousand dollars ($10,000) or more, without the board's prior approval.

SEC. 29. 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 (i), 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 or hear testimony regarding regulations to implement any of these service charges, 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 meeting 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.

CHAPTER 119

An act to amend Section 2640 of the Family Code, relating to property.

[Approved by Governor July 7, 2004. Filed with Secretary of State July 7, 2004.]

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

SECTION 1. Section 2640 of the Family Code is amended to read:

2640. (a) ''Contributions to the acquisition of property,'' as used in this section, include downpayments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property but do not include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property.

(b) In the division of the community estate under this division, unless a party has made a written waiver of the right to reimbursement or has signed a writing that has the effect of a waiver, the party shall be reimbursed for the party's contributions to the acquisition of property of the community property estate to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values and may not exceed the net value of the property at the time of the division.

(c) A party shall be reimbursed for the party's separate property contributions to the acquisition of property of the other spouse's separate property estate during the marriage, unless there has been a transmutation in writing pursuant to Chapter 5 (commencing with Section 850) of Part 2 of Division 4, or a written waiver of the right to reimbursement. The amount reimbursed shall be without interest or adjustment for change in monetary values and may not exceed the net value of the property at the time of the division.

CHAPTER 120

An act to amend Section 1520.5 of the Health and Safety Code, relating to community care facilities.

[Approved by Governor July 7, 2004. Filed with Secretary of State July 7, 2004.]

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

SECTION 1. Section 1520.5 of the Health and Safety Code is amended to read:

1520.5. (a) The Legislature hereby declares it to be the policy of the state to prevent overconcentrations of residential care facilities that impair the integrity of residential neighborhoods. Therefore, the director shall deny an application for a new residential care facility license if the director determines that the location is in a proximity to an existing residential care facility that would result in overconcentration.

(b) As used in this section, ''overconcentration'' means that if a new license is issued, there will be residential care facilities that are separated by a distance of 300 feet or less, as measured from any point upon the outside walls of the structures housing those facilities. Based on special local needs and conditions, the director may approve a separation distance of less than 300 feet with the approval of the city or county in which the proposed facility will be located.

(c) At least 45 days prior to approving any application for a new residential care facility, the director, or county licensing agency, shall notify, in writing, the planning agency of the city, if the facility is to be located in the city, or the planning agency of the county, if the facility is to be located in an unincorporated area, of the proposed location of the facility.

(d) Any city or county may request denial of the license applied for on the basis of overconcentration of residential care facilities.

(e) Nothing in this section authorizes the director, on the basis of overconcentration, to refuse to grant a license upon a change of ownership of an existing residential care facility where there is no change in the location of the facility.

(f) Foster family homes and residential care facilities for the elderly shall not be considered in determining overconcentration of residential care facilities, and license applications for those facilities shall not be denied upon the basis of overconcentration.

(g) Any transitional shelter care facility as defined in paragraph (11) of subdivision (a) of Section 1502 shall not be considered in determining overconcentration of residential care facilities, and license applications

for those facilities shall not be denied upon the basis of overconcentration.

CHAPTER 121

An act to amend Sections 1568.01 and 1568.02 of the Health and Safety Code, relating to care facilities.

[Approved by Governor July 7, 2004. Filed with Secretary of State July 7, 2004.]

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

SECTION 1. Section 1568.01 of the Health and Safety Code is amended to read:

1568.01. For purposes of this chapter, the following definitions shall apply:

(a) ''Activities of daily living'' means housework, meals, laundry, taking medication, money management, appropriate transportation, correspondence, telephoning, dressing, feeding, toileting, bathing, grooming, mobility, and related tasks.

(b) ''Care and supervision'' means ongoing assistance with activities of daily living without which a resident's physical health, mental health, safety, or welfare would be endangered.

(c) ''Chronic, life-threatening illness'' means HIV disease or AIDS.

(d) ''Department'' means the State Department of Social Services.

(e) ''Director'' means the Director of Social Services.

(f) ''Family dwelling'' includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

(g) ''Family unit'' means at least one parent or guardian and one or more of that parent or guardian's children. For purposes of this chapter, each family unit shall include at least one adult with HIV disease or AIDS, at least one child with HIV or AIDS, or both.

(h) ''Fund'' means the Residential Care Facilities for Persons with Chronic Life-Threatening Illness Fund created by subdivision (c) of Section 1568.05.

(i) ''Placement agency'' means any state agency, county agency, or private agency which receives public funds, in part, to identify housing

options for persons with chronic, life-threatening illness and refers these persons to housing.

(j) ''Residential care facility'' means a residential care facility for persons with chronic, life-threatening illness who are 18 years of age or older or are emancipated minors, and for family units.

(k) ''Six or fewer persons'' does not include the licensee or members of the licensee's family or persons employed as facility staff.

(*l*) ''Terminal disease'' or ''terminal illness'' means a medical condition resulting from a prognosis of a life expectancy of one year or less, if the disease follows its normal course.

SEC. 2. Section 1568.02 of the Health and Safety Code is amended to read:

1568.02. (a) (1) The department shall license residential care facilities for persons with chronic, life-threatening illness under a separate category.

(2) A residential care facility for persons with chronic, life-threatening illness may allow a person who has been diagnosed by his or her physician or surgeon as terminally ill, as defined in subdivision (*l*) of Section 1568.01, to become a resident of the facility if the person receives hospice services from a hospice certified in accordance with federal Medicare conditions of participation and is licensed pursuant to Chapter 8 (commencing with Section 1725) or Chapter 8.5 (commencing with Section 1745).

(b) The licensee of every facility required to be licensed pursuant to this chapter shall provide the following basic services for each resident:

(1) Room and board. No more than two residents shall share a bedroom, except that the director, in his or her discretion, may waive this limitation.

(2) Access to adequate common areas, including recreation areas and shared kitchen space with adequate refrigerator space for the storage of medications.

(3) Consultation with a nutritionist, including consultation on cultural dietary needs.

(4) Personal care services, as needed, including, but not limited to, activities of daily living. A facility may have a written agreement with another agency to provide personal care services, except that the facility shall be responsible for meeting the personal care needs of each resident.

(5) Access to case management for social services. A facility may have a written agreement with another agency to provide case management.

(6) Development, implementation, and monitoring of an individual services plan. All health services components of the plan shall be developed and monitored in coordination with the home health agency

or hospice agency and shall reflect the elements of the resident's plan of treatment developed by the home health agency or hospice agency.

(7) Intake and discharge procedures, including referral to outplacement resources.

(8) Access to psychosocial support services.

(9) Access to community-based and county services system.

(10) Access to a social and emotional support network of the resident's own choosing, within the context of reasonable visitation rules established by the facility.

(11) Access to intermittent home health care services in accordance with paragraph (1) of subdivision (c).

(12) Access to substance abuse services in accordance with paragraph (3) of subdivision (c).

(13) Adequate securable storage space for personal items.

(c) The licensee of every facility required to be licensed pursuant to this chapter shall demonstrate, at the time of application, all of the following:

(1) Written agreement with a licensed home health agency or hospice agency. Resident information may be shared between the home health agency or hospice agency and the residential care facility for persons with chronic, life-threatening illness relative to the resident's medical condition and the care and treatment provided to the resident by the home health agency or hospice agency, including, but not limited to, medical information, as defined by the Confidentiality of Medical Information Act, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code. Any regulations, policies, or procedures related to sharing resident information and development of protocols, established by the department pursuant to this section, shall be developed in consultation with the State Department of Health Services and persons representing home health agencies, hospice agencies, and residential care facilities for persons with chronic, life-threatening illness.

(2) Written agreement with a psychosocial services agency, unless the services are provided by the facility's professional staff.

(3) Written agreement with a substance abuse agency, unless the services are provided by the facility's professional staff.

(4) Ability to provide linguistic services for residents who do not speak English.

(5) Ability to provide culturally appropriate services.

(6) Ability to reasonably accommodate residents with physical disabilities, including, but not limited to, residents with motor impairments, physical access to areas of the facility utilized by residents, and access to interpreters for hearing-impaired residents.

(7) Written nondiscrimination policy which shall be posted in a conspicuous place in the facility.

(8) Written policy on drug and alcohol use, including, but not limited to, a prohibition on the use of illegal substances.

(d) Any facility licensed pursuant to this chapter which intends to serve a specific population, such as women, family units, minority and ethnic populations, or homosexual men or women, shall demonstrate, at the time of application, the ability and resources to provide services that are appropriate to the targeted population.

(e) No facility licensed pursuant to this chapter shall house more than 25 residents, except that the director may authorize a facility to house up to 50 residents.

(f) If the administrator is responsible for more than two facilities, the facility manager shall meet the qualifications of both the administrator and the facility manager, as described in Sections 87864 and 87864.1 of Title 22 of the California Code of Regulations.

(g) Each licensee shall employ additional personnel as necessary to meet the needs of the residents and comply with the requirements of this chapter and the regulations adopted by the department pursuant to this chapter. On-call personnel shall be able to be on the facility premises within 30 minutes of the receipt of a telephone call.

CHAPTER 122

An act to amend Section 19606 of the Business and Professions Code, relating to horse racing.

[Approved by Governor July 8, 2004. Filed with Secretary of State July 9, 2004.]

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

SECTION 1. Section 19606 of the Business and Professions Code is amended to read:

19606. (a) For harness, quarter horse, Appaloosa, Arabian, mixed breed, and fair meetings, the funds remaining after the distribution of the amounts set forth in Sections 19605.7 and 19605.71 shall be distributed 50 percent as commissions to the association that conducts the racing meeting and 50 percent to the horsemen participating in the racing meeting in the form of purses. However, owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting, except that for thoroughbred races the owners' premiums shall be as provided in subdivision (a) of Section 19605.8.

(b) In addition to funds distributed under Sections 19605.7 and 19605.71, from the amount that would be distributed to harness racing horsemen in the form of purses under this section, an amount equal to 0.1 percent of the amount handled on conventional and exotic wagers on standardbreds at satellite wagering facilities in California shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619.

CHAPTER 123

An act to amend Section 770.3 of the Insurance Code, relating to life and disability insurance.

[Approved by Governor July 8, 2004. Filed with Secretary of State July 9, 2004.]

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

SECTION 1. Section 770.3 of the Insurance Code is amended to read:

770.3. No state department or agency shall negotiate any life or disability insurance or require the placing of that insurance through particular agents, brokers, or companies, except to the extent that the state has a direct financial interest in the subject of the insurance. The state has no financial interest in an annuity purchased for an employee if the premium therefor is paid from a deduction from or reduction in the employee's salary, and any annuity paid for through a deduction or reduction shall not be deemed to have been provided by the state for its employees for purposes of this section, and the state shall not negotiate or require the placing of the annuity through particular agents, brokers, or companies. Nothing contained in this section shall affect the program of life and disability insurance in connection with veterans' farm and home purchases through the Department of Veterans Affairs except that the total life insurance benefit under that program shall in no event exceed 120% of the unpaid contract balance. Except in those cases where the premium for an annuity is paid entirely from a deduction from or reduction in an employee's salary, nothing contained in this section shall affect life or disability insurance programs which may be provided by the state for its employees.

Notwithstanding anything in this section to the contrary, in any case in which a tax-sheltered annuity under an annuity plan which meets the requirements of Section 403(b) of the Internal Revenue Code of 1954 is to be placed or purchased for an employee, the employee shall have the

right to designate the licensed agent, broker, or company through whom the employee's employer shall arrange for the placement or purchase of the tax-sheltered annuity. In any case in which the employee has designated an agent, broker, or company, the employer shall comply with that designation, except in the case of designations subject to Sections 1153 and 12420.2 of the Government Code.

As used in this section, ''state department or agency'' shall include, but not be limited to, school districts.

This section shall apply to all local governmental agencies, as well as state departments and agencies.

CHAPTER 124

An act to amend Section 44010 of the Education Code, relating to school employees.

[Approved by Governor July 8, 2004. Filed with Secretary of State July 9, 2004.]

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

SECTION 1. Section 44010 of the Education Code is amended to read:

44010. ''Sex offense,'' as used in Sections 44020, 44237, 44346, 44425, 44436, 44836, and 45123, means any one or more of the offenses listed below:

(a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), (c), or (d) of Section 243.4, or subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961

committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the offenses specified in this section.

(i) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

(j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.

(k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

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 125

An act to add Section 7661 to the Public Utilities Code, relating to railroad corporations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 8, 2004. Filed with Secretary of State July 9, 2004.]

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

SECTION 1. Section 7661 is added to the Public Utilities Code, to read:

7661. (a) The commission shall require every railroad corporation operating in this state to develop, within 90 days of the effective date of the act adding this section, in consultation with, and with approval by, the Office of Emergency Services, a protocol for rapid communications with the Office of Emergency Services, the Department of the California Highway Patrol, and designated county public safety agencies in an endangered area if there is a runaway train or any other uncontrolled train movement that threatens public health and safety.

(b) A railroad corporation shall promptly notify the Office of Emergency Services, the Department of the California Highway Patrol, and designated county public safety agencies, through a communication to the Warning Center of the Office of Emergency Services, if there is a runaway train or any other uncontrolled train movement that threatens public health and safety, in accordance with the railroad corporation's communications protocol developed pursuant to subdivision (a).

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

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

Due to an existing gap in communications during emergency situations where there is a runaway train or any other uncontrolled train movement that threatens public health and safety, it is necessary that this act take effect immediately.

CHAPTER 126

An act to amend Section 53270 of the Government Code, relating to firefighters.

[Approved by Governor July 8, 2004. Filed with Secretary of State July 9, 2004.]

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

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

(a) Fiscally strapped fire agencies often propose eliminating public employee jobs, including career firefighter positions, in an effort to relieve local budget shortfalls.

(b) Firefighters who are displaced as a result of job elimination have spent many months qualifying for professional work and have completed probation periods of up to one year, and in some cases two years, to prove their competency.

(c) The loss of a career job is not only devastating to a firefighter, but to his or her family members as well.

(d) Current law enables the California Firefighter Joint Apprenticeship Program to establish and administer a list of federal firefighters displaced due to military base closures and gives fire departments the ability to hire from the established list.

(e) The creation and management of a similar hiring list for use by local fire agencies will save local governments time, as well as money with regard to the hiring process. It will also give professional firefighters the ability to continue working in their chosen fire service career.

(f) It is the intent of the Legislature to allow the California Firefighter Joint Apprenticeship Program to establish and administer a list of all displaced state and local government firefighters due to layoffs in any jurisdiction in California and give fire agencies the authority to grant special hiring consideration to displaced fire service personnel.

SEC. 2. Section 53270 of the Government Code is amended to read:

53270. (a) The Legislature hereby finds that the hiring of permanent career civilian federal, state, and local government firefighters by local agencies as specified in this section is in need of uniform statewide regulation and constitutes a matter of statewide concern that shall be governed solely by this section.

(b) Notwithstanding any other provision of law, upon approval by its governing body, a local government, including, but not limited to, a fire protection district, joint powers agency, or the fire department of a city, including a charter city, county, or city and county, or any political subdivision of one of these agencies, when hiring additional firefighters, may appoint as a member or officer any person who meets all of the following criteria:

(1) Was serving as a permanent career civilian federal firefighter in good standing at any United States military installation or was a permanent career firefighter employed by the state or a local government within the state.

(2) Has satisfactorily completed all firefighter training required for employment as a permanent career civilian federal, state, or local government firefighter.

(3) Was, as a consequence of the closure, downsizing, or realignment of a federal military installation, terminated as a permanent career civilian federal firefighter, or as a consequence of job-elimination, terminated as a permanent career state or local government firefighter, within 48 months prior to the appointment.

(c) The appointment authority created by this section shall take precedence over any provision of, or any condition or circumstance arising from a provision of, a charter, ordinance, or resolution that governs employment of firefighters, that would otherwise frustrate the purpose of this section, including, but not limited to, the following:

(1) The local government maintains a civil service or merit system governing the appointment of firefighters.

(2) The local government has available to it an eligible or regular reemployment list of persons eligible for those appointments.

(3) The appointed person is not on any eligible list.

(d) A local government may not employ a person pursuant to this section if a special reemployment list is in existence for the firefighter position to be filled.

(e) If a local government determines to appoint a person pursuant to this section, it shall give first priority to residents of the jurisdiction, and second priority to residents of the county not residing in the jurisdiction.

(f) The seniority, seniority-related privileges, and rank that a permanent career civilian federal, state, or local government firefighter possessed while employed at a federal military installation or by the state or a local government shall not be required to be transferred to a position in a local government fire department obtained pursuant to this section.

(g) To effectuate the purposes of this section, the California Firefighter Joint Apprenticeship Program may administer, prepare, and circulate to local governments a list of permanent career civilian federal, state, and local government firefighters eligible for appointment pursuant to this section. Placement on the list shall be governed by length of service as a permanent career civilian federal, state, or local government firefighter. A permanent career civilian federal, state, or local government firefighter may apply for placement on the list after he or she receives a notice of termination of position or a priority placement notice, and shall remain on the list for a period of 48 months.

———

CHAPTER 127

An act to add Section 290.9 to the Penal Code, relating to sex offenders.

[Approved by Governor July 8, 2004. Filed with Secretary of State July 9, 2004.]

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

SECTION 1. Section 290.9 is added to the Penal Code, to read:

290.9. Notwithstanding any other provision of law, any state or local governmental agency shall, upon written request, provide to the Department of Justice the address of any person represented by the department to be a person who is in violation of his or her duty to register under Section 290.

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 128

An act to amend Section 8811.5 of the Family Code, relating to adoption.

[Approved by Governor July 8, 2004. Filed with Secretary of State July 9, 2004.]

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

SECTION 1. Section 8811.5 of the Family Code is amended to read:

8811.5. (a) A licensed private or public adoption agency of the state of the petitioners' residency may certify prospective adoptive parents by a preplacement evaluation that contains a finding that an individual is suited to be an adoptive parent.

(b) The preplacement evaluation shall include an investigation pursuant to standards included in the regulations governing independent adoption investigations established by the department. Fees for the investigation shall be commensurate with those fees charged for a

comparable investigation conducted by the department or by a delegated licensed county adoption agency.

(c) The preplacement evaluation, whether it is conducted for the purpose of initially certifying prospective adoptive parents or for renewing that certification, shall be completed no more than one year prior to the signing of an adoption placement agreement. The cost for renewal of that certification shall be in proportion to the extent of the work required to prepare the renewal that is attributable to changes in family circumstances.

CHAPTER 129

An act to amend Sections 1790, 1792, 1792.4, and 1792.5 of, to add Sections 1792.7, 1792.8, 1792.9, and 1792.10 to, and to repeal Section 1792.1 of, the Health and Safety Code, relating to continuing care contracts.

[Approved by Governor July 8, 2004. Filed with Secretary of State July 9, 2004.]

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

SECTION 1. Section 1790 of the Health and Safety Code is amended to read:

1790. (a) Each provider, that has obtained a provisional or final certificate of authority, and each provider that possesses an inactive certificate of authority, shall submit an annual report of its financial condition. The report shall consist of audited financial statements and required reserve calculations, with accompanying certified public accountants' opinions thereon, Continuing Care Provider Fee and Calculation Sheet, evidence of fidelity bond as required by Section 1789.8, and certification that the continuing care contract in use for new residents has been approved by the department, all in a format provided by the department, and shall include all of the following information:

(1) A certification, if applicable, that the entity is maintaining reserves for prepaid continuing care contracts, statutory reserves, and refund reserves.

(2) Full details on the status of reserves and on per capita costs of operation for each continuing care retirement community operated.

(3) Full details on any increase in monthly care fees, the basis for determining the increase, and the data used to calculate the increase.

(4) The required reserve calculation schedules shall be accompanied by the auditor's opinion as to compliance with applicable statutes.

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

(b) Each provider shall file the annual report with the department within four months after the provider's fiscal yearend. If the complete annual report is not received by the due date, a one thousand dollar ($1,000) late fee shall accompany submission of the reports. If the reports are more than 30 days past due, an additional fee of thirty-three dollars ($33) for each day over the first 30 days shall accompany submission of the report. The department may, at its discretion, waive the late fee for good cause.

(c) The annual report and any amendments thereto shall be signed and certified by the chief executive officer of the provider, stating that, to the best of his or her knowledge and belief, the items are correct.

(d) A copy of the most recent annual audited financial statement shall be transmitted by the provider to each transferor requesting the statement.

(e) A provider shall amend its annual report on file with the department at any time, without the payment of any additional fee, if an amendment is necessary to prevent the report from containing a material misstatement of fact or omitting a material fact.

(f) If a provider is no longer entering into continuing care contracts, and currently is caring for 10 or fewer continuing care residents, the provider may request permission from the department, in lieu of filing the annual report, to establish a trust fund or to secure a performance bond to ensure fulfillment of continuing care contract obligations. The request shall be made each year within 30 days after the provider's fiscal year end. The request shall include the amount of the trust fund or performance bond determined by calculating the projected life costs, less the projected life revenue, for the remaining continuing care residents in the year the provider requests the waiver. If the department approves the request, the following shall be submitted to the department annually:

(1) Evidence of trust fund or performance bond and its amount.

(2) A list of continuing care contract residents. If the number of continuing care residents exceeds 10 at any time, the provider shall comply with the requirements of this section.

(3) A provider fee as required by subdivision (c) of Section 1791.

(g) If the department determines a provider's annual audited report needs further analysis and investigation, as a result of incomplete and inaccurate financial statements, significant financial deficiencies, development of work out plans to stabilize financial solvency, or for any other reason, the provider shall reimburse the department for reasonable actual costs incurred by the department or its representative. The reimbursed funds shall be deposited in the Continuing Care Contract Provider Fee Fund.

SEC. 2. Section 1792 of the Health and Safety Code is amended to read:

1792. (a) A provider shall maintain at all times qualifying assets as a liquid reserve in an amount that equals or exceeds the sum of the following:

(1) The amount the provider is required to hold as a debt service reserve under Section 1792.3.

(2) The amount the provider must hold as an operating expense reserve under Section 1792.4.

(b) The liquid reserve requirement described in this section is satisfied when a provider holds qualifying assets in the amount required. Except as may be required under subdivision (d), a provider is not required to set aside, deposit into an escrow, or otherwise restrict the assets it holds as its liquid reserve.

(c) A provider shall not allow the amount it holds as its liquid reserve to fall below the amount required by this section. In the event the amount of a provider's liquid reserve is insufficient, the provider shall prudently eliminate the deficiency by increasing its assets qualifying under Section 1792.2.

(d) The department may increase the amount a provider is required to hold as its liquid reserve or require that a provider immediately place its liquid reserve into an escrow account meeting the requirements of Section 1781 if the department has reason to believe the provider is any of the following:

(1) Insolvent.

(2) In imminent danger of becoming insolvent.

(3) In a financially unsound or unsafe condition.

(4) In a condition such that it may otherwise be unable to fully perform its obligations pursuant to continuing care contracts.

(e) For providers that have voluntarily and permanently discontinued entering into continuing care contracts, the department may allow a reduced liquid reserve amount if the department finds that the reduction is consistent with the financial protections imposed by this article. The reduced liquid reserve amount shall be based upon the percentage of residents at the continuing care retirement community who have continuing care contracts.

SEC. 3. Section 1792.1 of the Health and Safety Code is repealed.

SEC. 4. Section 1792.4 of the Health and Safety Code is amended to read:

1792.4. (a) Each provider shall include in its liquid reserve a reserve for its operating expenses in an amount that equals or exceeds 75 days' net operating expenses. For purposes of this section:

(1) Seventy-five days net operating expenses shall be calculated by dividing the provider's operating expenses during the immediately preceding fiscal year by 365, and multiplying that quotient by 75.

(2) ''Net operating expenses'' includes all expenses except the following:

(A) The interest and credit enhancement expenses factored into the provider's calculation of its long-term debt reserve obligation described in Section 1792.3.

(B) Depreciation or amortization expenses.

(C) An amount equal to the reimbursement paid to the provider during the past 12 months for services to residents other than residents holding continuing care contracts.

(D) Extraordinary expenses that the department determines may be excluded by the provider. A provider shall apply in writing for a determination by the department and shall provide supporting documentation prepared in accordance with generally accepted accounting principles.

(b) A provider that has been in operation for less than 12 months shall calculate its net operating expenses by using its actual expenses for the months it has operated and, for the remaining months, the projected net operating expense amounts it submitted to the department as part of its application for a certificate of authority.

SEC. 5. Section 1792.5 of the Health and Safety Code is amended to read:

1792.5. (a) The provider shall compute its liquid reserve requirement as of the end of the provider's most recent fiscal yearend based on its audited financial statements for that period and, at the time it files its annual report, shall file a form acceptable to the department certifying all of the following:

(1) The amount the provider is required to hold as a liquid reserve, including the amounts required for the debt service reserve and the operating expense reserve.

(2) The qualifying assets, and their respective values, the provider has designated for its debt service reserve and for its operating expense reserve.

(3) The amount of any deficiency or surplus for the provider's debt service reserve and the provider's operating expense reserve.

(b) For the purpose of calculating the amount held by the provider to satisfy its liquid reserve requirement, all qualifying assets used to satisfy the liquid reserve requirements shall be valued at their fair market value as of the end of the provider's most recently completed fiscal year. Restricted assets that have guaranteed values and are designated as qualifying assets under paragraph (6) or (7) of subdivision (a) of Section 1792.2 may be valued at their guaranteed values.

SEC. 6. Section 1792.7 is added to the Health and Safety Code, to read:

1792.7. (a) The Legislature finds and declares all of the following:

(1) In continuing care contracts, providers offer a wide variety of living accommodations and care programs for an indefinite or extended number of years in exchange for substantial payments by residents.

(2) The annual reporting and reserve requirements for each continuing care provider should include a report that summarizes the provider's recent and projected performance in a form useful to residents, prospective residents, and the department.

(3) Certain providers enter into ''life care contracts'' or similar contracts with their residents. Periodic actuarial studies that examine the actuarial financial condition of these providers will help to assure their long-term financial soundness.

(b) Each provider shall annually file with the department a report that shows certain key financial indicators for the provider's past five years, based on the provider's actual experience, and for the upcoming five years, based on the provider's projections. Providers shall file their key indicator reports in the manner required by Section 1792.9 and in a form prescribed by the department.

(c) Each provider that has entered into Type A contracts shall file with the department an actuary's opinion as to the actuarial financial condition of the provider's continuing care operations in the manner required by Section 1792.10.

SEC. 7. Section 1792.8 is added to the Health and Safety Code, to read:

1792.8. (a) For purposes of this article, ''actuarial study'' means an analysis that addresses the current actuarial financial condition of a provider that is performed by an actuary in accordance with accepted actuarial principles and the standards of practice adopted by the Actuarial Standards Board. An actuarial study shall include all of the following:

(1) An actuarial report.

(2) A statement of actuarial opinion.

(3) An actuarial balance sheet.

(4) A cohort pricing analysis.

(5) A cashflow projection.

(6) A description of the actuarial methodology, formulae, and assumptions.

(b) ''Actuary'' means a member in good standing of the American Academy of Actuaries who is qualified to sign a statement of actuarial opinion.

(c) ''Type A contract'' means a continuing care contract that has an up-front entrance fee and includes provision for housing, residential

services, amenities, and unlimited specific health-related services with little or no substantial increases in monthly charges, except for normal operating costs and inflation adjustments.

SEC. 7. Section 1792.9 is added to the Health and Safety Code, to read:

1792.9. (a) All providers shall file annually with the department a financial report disclosing key financial ratios and other key indicators in a form determined by the department.

(b) The department shall issue a ''Key Indicators Report'' form to providers that shall be used to satisfy the requirements of subdivision (a). The Key Indicators Report shall require providers to disclose the following information:

(1) Operational data indicating the provider's average annual occupancy by facility.

(2) Margin ratios indicating the provider's net operating margin and net operating margin adjusted to reflect net proceeds from entrance fees.

(3) Liquidity indicators stating both the provider's total cash and investments available for operational expenses and the provider's days cash on hand.

(4) Capital structure indicators stating the provider's dollar figures for deferred revenue from entrance fees, net annual entrance fee proceeds, unrestricted net assets, and annual capital expenditure.

(5) Capital structure ratios indicating the provider's annual debt service coverage, annual debt service coverage adjusted to reflect net proceeds from entrance fees, annual debt service over revenue percentage, and unrestricted cash over long-term debt percentage.

(6) Capital structure indicators stating the provider's average age of facility calculation based on accumulated depreciation and the provider's average annual effective interest rate.

(c) The department shall determine the appropriate formula for calculating each of the key indicators included in the Key Indicator Report. The department shall base each formula on generally accepted standards and practices related to the financial analysis of continuing care providers and entities engaged in similar enterprises.

(d) Each provider shall file its annual Key Indicators Report within 30 days following the due date for the provider's annual report. If the Key Indicators Report is not received by the department by the date it is due, the provider shall pay a one thousand dollar ($1,000) late fee at the time the report is submitted. The provider shall pay an additional late fee of thirty-three dollars ($33) for each day the report is late beyond 30 days. For purposes of this section, a provider's Key Indicators Report is not submitted to the department until the provider has paid all accrued late fees.

SEC. 8. Section 1792.10 is added to the Health and Safety Code, to read:

1792.10. (a) Each provider that has entered into Type A contracts shall submit to the department, at least once every five years, an actuary's opinion as to the provider's actuarial financial condition. The actuary's opinion shall be based on an actuarial study completed by the opining actuary in a manner that meets the requirements described in Section 1792.8. The actuary's opinion, and supporting actuarial study, shall examine, refer to, and opine on the provider's actuarial financial condition as of a specified date that is within four months of the date the opinion is provided to the department.

(b) Each provider required to file an actuary's opinion under subdivision (a) that held a certificate of authority on December 31, 2003, shall file its actuary's opinion before the expiration of five years following the date it last filed an actuarial study or opinion with the department. Thereafter, the provider shall file its required actuary's opinion before the expiration of five years following the date it last filed an actuary's opinion with the department.

(c) Each provider required to file an actuary's opinion under subdivision (a) that did not hold a certificate of authority on December 31, 2003, shall file its first actuary's opinion within 45 days following the due date for the provider's annual report for the fiscal year in which the provider obtained its certificate of authority. Thereafter, the provider shall file its required actuary's opinion before the expiration of five years following the date it last filed an actuary's opinion with the department.

(d) The actuary's opinion required by subdivision (a) shall comply with generally accepted actuarial principles and the standards of practice adopted by the Actuarial Standards Board. The actuary's opinion shall also include statements that the data and assumptions used in the underlying actuarial study are appropriate and that the methods employed in the actuarial study are consistent with sound actuarial principles and practices. The actuary's opinion must state whether the provider has adequate resources to meet all its actuarial liabilities and related statement items, including an appropriate surplus, and whether the provider's financial condition is actuarially sound.

CHAPTER 130

An act to amend Section 654.05 of the Harbors and Navigation Code, relating to boating.

[Approved by Governor July 8, 2004. Filed with Secretary of State July 9, 2004.]

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

SECTION 1. Section 654.05 of the Harbors and Navigation Code, as added by Section 5 of Chapter 496 of the Statutes of 2003, is amended to read:

654.05. (a) The owner of a motorized recreational vessel that is numbered pursuant to Section 9850 of the Vehicle Code, or that is documented by an agency of the federal government, shall not operate, or authorize the operation of, the vessel in or upon the inland waters, or in or upon ocean waters that are within one mile of the coastline of the state, in a manner that exceeds the following noise levels:

(1) For engines manufactured before January 1, 1993, a noise level of 90 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice SAE J2005 (Stationary Sound Level Measurement Procedure for Pleasure Motorboats).

(2) For engines manufactured on or after January 1, 1993, a noise level of 88 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice SAE J2005 (Stationary Sound Level Measurement Procedure for Pleasure Motorboats).

(3) A noise level of 75 dB(A) measured as specified in the Society of Automotive Engineers Recommended Practice SAE J1970 (Shoreline Sound Level Measurement Procedure). However, a measurement of noise level that is in compliance with this paragraph does not preclude the conducting of a test of noise levels under paragraph (1) or (2).

(b) A law enforcement officer utilizing a decibel measuring device for the purposes of enforcing this section shall be knowledgeable and proficient in the use of that device.

(c) The department may, by regulation, revise the measurement procedure when deemed necessary to adjust to advances in technology.

(d) This section does not apply to motorized recreational vessels competing under a local public entity or United States Coast Guard permit in a regatta, in a boat race, while on trial runs, or while on official trials for speed records during the time and in the designated area authorized by the permit. In addition, this section does not apply to motorized recreational vessels preparing for a race or regatta if authorized by a permit issued by the local entity having jurisdiction over the area where these preparations occur.

(e) This section shall become operative on January 1, 2005.

———

CHAPTER 131

An act to amend Section 4406 of the Commercial Code, relating to commercial law.

[Approved by Governor July 8, 2004. Filed with Secretary of State July 9, 2004.]

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

SECTION 1. Section 4406 of the Commercial Code, as amended by Section 1 of Chapter 122 of the Statutes of 2000, is amended to read:

4406. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items, it shall provide in the statement of account the telephone number that the customer may call to request an item or a legible copy thereof pursuant to subdivision (b).

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank shall provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or a legible copy thereof with respect to each statement of account sent to the customer.

(c) If a bank sends or makes available a statement of account or items pursuant to subdivision (a), the customer shall exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer shall promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subdivision (c), the customer is precluded from asserting any of the following against the bank:

(1) The customer's unauthorized signature or any alteration on the item if the bank also proves that it suffered a loss by reason of the failure.

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subdivision (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subdivision (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subdivision (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subdivision (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subdivision, the payer bank may not recover for breach of warranty under Section 4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

(g) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

SEC. 2. Section 4406 of the Commercial Code, as amended by Section 2 of Chapter 122 of the Statutes of 2000, is amended to read:

4406. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer to identify the items paid. If the bank does not return the items, it shall provide in the statement of account the telephone number that the customer may call to request an item or a legible copy thereof pursuant to subdivision (b).

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank shall provide in a reasonable time either the item or, if the item has been

destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or a legible copy thereof with respect to each statement of account sent to the customer.

(c) If a bank sends or makes available a statement of account or items pursuant to subdivision (a), the customer shall exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer shall promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subdivision (c), the customer is precluded from asserting any of the following against the bank:

(1) The customer's unauthorized signature or any alteration on the item if the bank also proves that it suffered a loss by reason of the failure.

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subdivision (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subdivision (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subdivision (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subdivision (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subdivision, the payer bank may not recover for breach of warranty under Section 4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

(g) This section shall become operative on January 1, 2010.

———

CHAPTER 132

An act to repeal Section 11382 of the Elections Code, relating to recall elections.

[Approved by Governor July 8, 2004. Filed with Secretary of State July 9, 2004.]

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

SECTION 1. Section 11382 of the Elections Code is repealed.

CHAPTER 133

An act to add Section 429.6 to the Government Code, relating to veterans.

[Approved by Governor July 13, 2004. Filed with Secretary of State July 13, 2004.]

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

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

(1) The California State Military Museum, was authorized by the Legislature in 1981 by Section 179 of the Military and Veterans Code, which states ''The Adjutant General [of the California National Guard] may establish a California National Guard military museum and resource center as a repository for military artifacts, memorabilia, equipment, documents, and other items relating to the history of the California National Guard.''

(2) The museum was established in 1983 and is operated by a nonprofit educational organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and has been in its present location in Sacramento since 1990.

(3) In 1994, the museum was designated the official military museum of California by Governor Pete Wilson by executive order.

(4) In 1995, the California Citizen Soldier Museum was renamed the California Military Museum and the museum's focus was changed to include all of California's military history.

(5) In true military fashion, a group of volunteers under the auspices of the California National Guard Historical Association began the task of establishing a museum.

(6) Today, the museum has over 30,000 military artifacts including weapons, uniforms, unit records, battle flags, photographs, personal letters, newspaper articles, medals, and other information.

(7) In 1993, the Legislature, by enacting Section 179.5 of the Military and Veterans Code transferred Civil War artifacts that were on display in the State Capitol to the California Military Museum for the museum to preserve, maintain, and exhibit these Civil War artifacts.

(8) In 1998, the Legislature, through the California Arts Council appropriated $250,000 in state funding, allowing the California Military Museum to establish the California Military History Educational Project.

(9) The California Military History Educational Project is a cooperative effort between the California Military Museum, the University of California, Irvine's Humanities Research Institute, California State University of Los Angeles Charter College of Education, and the University of California San Diego Supercomputer Center.

(10) The California Military History Educational Project has developed an educational Web site, a World War II oral history project, and the project also developed the grade-appropriate California State Educational Curriculum concerning California's role in World War II for use in California schools.

(11) In 2000, the Legislature enacted an urgency measure, Chapter 16 of the Statutes of 2000, to require that military awards and decorations that come into possession of the Controller as unclaimed property are to be held in trust at the California National Guard Museum and Resource Center. This legislation was a beneficial development in the preservation of California's military history.

(12) In 2002, the Legislature directed the Adjutant General pursuant to Section 179 of the Military and Veterans Code to establish the California State Military Museum and Resource Center and appropriated funds for a local assistance grant to the museum.

(13) In 2003, the Legislature enacted Chapter 265 of the Statutes of 2003 to amend, among other provisions, Section 1563 of the Code of Civil Procedure to require that military artifacts and memorabilia that come into the possession of the Controller as unclaimed property be held in trust at the California State Military Museum and Resource Center.

(14) The museum is currently operated by the California Military Museum Foundation, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, under a memorandum of understanding between the Adjutant General and the foundation.

(15) The legislative and executive branches have a long history of supporting the California State Military Museum and Resource Center over the past 21 years.

(b) The Legislature finds and declares that it is appropriate at this time to designate by statute the California State Military Museum and Resource Center as the official state military museum.

SEC. 2. Section 429.6 is added to the Government Code, to read:

429.6. The California State Military Museum and Resource Center is the official state military museum.

CHAPTER 134

An act to amend Section 18987.5 of the Welfare and Institutions Code, relating to children, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 13, 2004. Filed with Secretary of State July 13, 2004.]

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

SECTION 1. Section 18987.5 of the Welfare and Institutions Code is amended to read:

18987.5. Except as otherwise provided in this chapter, this chapter shall become inoperative on January 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

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

In order to timely implement the continuation of the youth pilot program provided for pursuant to Chapter 12.85 (commencing with Section 18987) of Part 6 of Division 9 of the Welfare and Institutions Code by this act, it is necessary that this act take effect immediately.

CHAPTER 135

An act to amend Section 451.5 of the Penal Code, relating to arson.

[Approved by Governor July 13, 2004. Filed with
Secretary of State July 13, 2004.]

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

SECTION 1. Section 451.5 of the Penal Code is amended to read:

451.5. (a) Any person who willfully, maliciously, deliberately, with premeditation, and with intent to cause injury to one or more persons or to cause damage to property under circumstances likely to produce injury to one or more persons or to cause damage to one or more structures or inhabited dwellings, sets fire to, burns, or causes to be burned, or aids, counsels, or procures the burning of any residence, structure, forest land, or property is guilty of aggravated arson if one or more of the following aggravating factors exists:

(1) The defendant has been previously convicted of arson on one or more occasions within the past 10 years.

(2) (A) The fire caused property damage and other losses in excess of five million six hundred fifty thousand dollars ($5,650,000).

(B) In calculating the total amount of property damage and other losses under subparagraph (A), the court shall consider the cost of fire suppression. It is the intent of the Legislature that this paragraph be reviewed within five years to consider the effects of inflation on the dollar amount stated herein. For that reason, this paragraph shall remain in effect until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

(3) The fire caused damage to, or the destruction of, five or more inhabited structures.

(b) Any person who is convicted under subdivision (a) shall be punished by imprisonment in the state prison for 10 years to life.

(c) Any person who is sentenced under subdivision (b) shall not be eligible for release on parole until 10 calendar years have elapsed.

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 136

An act to amend Section 18100.5 of, and to add Sections 18105, 18106, 18107, and 18108 to, the Probate Code, relating to trusts.

[Approved by Governor July 13, 2004. Filed with Secretary of State July 13, 2004.]

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

SECTION 1. Section 18100.5 of the Probate Code is amended to read:

18100.5. (a) The trustee may present a certification of trust to any person in lieu of providing a copy of the trust instrument to establish the existence or terms of the trust. A certification of trust may be executed by the trustee voluntarily or at the request of the person with whom the trustee is dealing.

(b) The certification of trust may confirm the following facts or contain the following information:

(1) The existence of the trust and date of execution of the trust instrument.

(2) The identity of the settlor or settlors and the currently acting trustee or trustees of the trust.

(3) The powers of the trustee.

(4) The revocability or irrevocability of the trust and the identity of any person holding any power to revoke the trust.

(5) When there are multiple trustees, the signature authority of the trustees, indicating whether all, or less than all, of the currently acting trustees are required to sign in order to exercise various powers of the trustee.

(6) The trust identification number, whether a social security number or an employer identification number.

(7) The manner in which title to trust assets should be taken.

(8) The legal description of any interest in real property held in the trust.

(c) The certification shall contain a statement that the trust has not been revoked, modified, or amended in any manner which would cause the representations contained in the certification of trust to be incorrect and shall contain a statement that it is being signed by all of the currently acting trustees of the trust. The certification shall be in the form of an acknowledged declaration signed by all currently acting trustees of the trust. The certification signed by the currently acting trustee may be recorded in the office of the county recorder in the county where all or a portion of the real property is located.

(d) The certification of trust may, but is not required to, include excerpts from the original trust documents, any amendments thereto, and any other documents evidencing or pertaining to the succession of successor trustees. The certification of trust shall not be required to contain the dispositive provisions of the trust which set forth the distribution of the trust estate.

(e) A person whose interest is, or may be, affected by the certification of trust may require that the trustee offering or recording the certification of trust provide copies of those excerpts from the original trust documents, any amendments thereto, and any other documents which designate, evidence, or pertain to the succession of the trustee or confer upon the trustee the power to act in the pending transaction, or both. Nothing in this section is intended to require or imply an obligation to provide the dispositive provisions of the trust or the entire trust and amendments thereto.

(f) A person who acts in reliance upon a certification of trust without actual knowledge that the representations contained therein are incorrect is not liable to any person for so acting. A person who does not have actual knowledge that the facts contained in the certification of trust are incorrect may assume without inquiry the existence of the facts contained in the certification of trust. Actual knowledge shall not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the trust certification. Any transaction, and any lien created thereby, entered into by the trustee and a person acting in reliance upon a certification of trust shall be enforceable against the trust assets. However, if the person has actual knowledge that the trustee is acting outside the scope of the trust, then the transaction is not enforceable against the trust assets. Nothing contained herein shall limit the rights of the beneficiaries of the trust against the trustee.

(g) A person's failure to demand a certification of trust does not affect the protection provided that person by Section 18100, and no inference as to whether that person has acted in good faith may be drawn from the failure to demand a certification of trust. Nothing in this section is intended to create an implication that a person is liable for acting in reliance upon a certification of trust under circumstances where the requirements of this section are not satisfied.

(h) Except when requested by a beneficiary or in the context of litigation concerning a trust and subject to the provisions of subdivision (e), any person making a demand for the trust documents in addition to a certification of trust to prove facts set forth in the certification of trust acceptable to the third party shall be liable for damages, including attorney's fees, incurred as a result of the refusal to accept the certification of trust in lieu of the requested documents if the court

determines that the person acted in bad faith in requesting the trust documents.

(i) Any person may record a certification of trust that relates to an interest in real property in the office of the county recorder in any county in which all or a portion of the real property is located. The county recorder shall impose any fee prescribed by law for recording that document sufficient to cover all costs incurred by the county in recording the document. The recorded certification of trust shall be a public record of the real property involved. This subdivision does not create a requirement to record a certification of trust in conjunction with the recordation of a transfer of title of real property involving a trust.

SEC. 2. Section 18105 is added to the Probate Code, to read:

18105. If title to an interest in real property is affected by a change of trustee, the successor trustee may execute and record in the county in which the property is located an affidavit of change of trustee. The county recorder shall impose any fee prescribed by law for recording that document in an amount sufficient to cover all costs incurred by the county in recording the document. The affidavit shall include the legal description of the real property, the name of the former trustee or trustees and the name of the successor trustee or trustees. The affidavit may also, but is not required to, include excerpts from the original trust documents, any amendments thereto, and any other documents evidencing or pertaining to the succession of the successor trustee or trustees.

SEC. 3. Section 18106 is added to the Probate Code, to read:

18106. (a) A document establishing the fact of change of trustee recorded pursuant to this chapter is subject to all statutory requirements for recorded documents.

(b) The county recorder shall index a document establishing the fact of change of a trustee recorded pursuant to this section in the index of grantors and grantees. The index entry shall be for the grantor, and for the purpose of this index, the person who has been succeeded as trustee shall be deemed to be the grantor. The county recorder shall impose any fee prescribed by law for indexing that document in an amount sufficient to cover all costs incurred by the county in indexing the document.

SEC. 4. Section 18107 is added to the Probate Code, to read:

18107. A document establishing the change of a trustee recorded pursuant to this chapter is prima facie evidence of the change of trustee insofar as the document identifies an interest in real property located in the county, title to which is affected by the change of trustee. The presumption established by this section is a presumption affecting the burden of producing evidence.

SEC. 5. Section 18108 is added to the Probate Code, to read:

18108. Any person whose interest is, or may be, affected by the recordation of an affidavit of change of trustee pursuant to this chapter

may require that the successor trustee provide copies of those excerpts from the original trust documents, any amendments thereto, and any other documents which evidence or pertain to the succession of the successor trustee or trustees. Nothing in this section is intended to require or imply an obligation to provide the dispositive provisions of the trust or the entire trust and any amendments thereto.

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.

In addition, 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 137

An act to amend Section 374.3 of the Penal Code, relating to illegal dumping.

[Approved by Governor July 13, 2004. Filed with Secretary of State July 13, 2004.]

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

SECTION 1. Section 374.3 of the Penal Code is amended to read:

374.3. (a) It is unlawful to dump or cause to be dumped any waste matter in or upon any public or private highway or road, including any portion of the right-of-way thereof, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property.

(b) It is unlawful to place, deposit, or dump, or cause to be placed, deposited, or dumped, any rocks, concrete, asphalt, or dirt in or upon any private highway or road, including any portion of the right-of-way

thereof, or any private property, without the consent of the owner, or in or upon any public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property.

(c) Any person violating this section is guilty of an infraction. Each day that waste placed, deposited, or dumped in violation of subdivision (a) or (b) of this section remains is a separate violation.

(d) This section does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies.

(e) A person convicted of a violation of this section shall be punished by a mandatory fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars ($750) nor more than two thousand five hundred dollars ($2,500) upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled.

(f) The court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property.

(g) Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that any person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than 12 hours.

(h) (1) Any person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in commercial quantities shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than six months and by a fine. The fine is mandatory and shall amount to not less than one thousand dollars ($1,000) nor more than three thousand dollars ($3,000) upon a first conviction, not less than three thousand dollars ($3,000) nor more than six thousand dollars ($6,000) upon a second conviction, and not less

than six thousand dollars ($6,000) nor more than ten thousand dollars ($10,000) upon a third or subsequent conviction.

(2) ''Commercial quantities'' means an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard. This subdivision does not apply to the dumping of household waste at a person's residence.

(i) For purposes of this section, ''person'' means an individual, trust, firm, partnership, joint stock company, joint venture, or corporation.

(j) Except in unusual cases where the interests of justice would be best served by waiving or reducing a fine, the minimum fines provided by this section shall not be waived or reduced.

CHAPTER 138

An act to amend Section 972.1 of the Military and Veterans Code, relating to veterans.

[Approved by Governor July 13, 2004. Filed with Secretary of State July 13, 2004.]

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

SECTION 1. Section 972.1 of the Military and Veterans Code, as amended by Section 1 of Chapter 11 of the Statutes of 2000, is amended to read:

972.1. (a) The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the General Fund to the Department of Veterans Affairs for allocation, during the 1989–90 fiscal year, for purposes of funding the activities of county veteran service officers pursuant to this section. Funds for allocation in future years shall be as provided in the annual Budget Act.

(b) Funds shall be disbursed each fiscal year on a pro rata basis to counties that have established and maintain a county veteran service officer in accordance with the staffing level and workload of each county veteran service officer under a formula based upon performance that shall be developed by the Department of Veterans Affairs for these purposes.

(c) The department shall annually determine the amount of new or increased monetary benefits paid to eligible veterans by the federal government attributable to the assistance of county veteran service officers. The department shall on or before January 1, prepare and transmit its determination for the preceding fiscal year to the Department

of Finance and the Legislature. The Department of Finance shall review the department's determination in time to use the information in the annual Budget Act for the budget of the department for the next fiscal year.

(d) (1) The Legislature finds and declares that 50 percent of the amount annually budgeted for county veteran service officers is approximately five million dollars ($5,000,000). The Legislature further finds and declares that it is an efficient and reasonable use of state funds to increase the annual budget for county veteran service officers in an amount not to exceed five million dollars ($5,000,000) if it is justified by the monetary benefits to the state's veterans attributable to the effort of these officers.

(2) It is the intent of the Legislature, after reviewing the department's determination in subdivision (c), to consider an increase in the annual budget for county veteran service officers in an amount not to exceed five million dollars ($5,000,000), if the monetary benefits to the state's veterans attributable to the assistance of county veteran service officers justify that increase in the budget.

(e) This section shall remain in effect only until January 1, 2011, and as of that date is repealed.

SEC. 2. Section 972.1 of the Military and Veterans Code, as amended by Section 2 of Chapter 11 of the Statutes of 2000, is amended to read:

972.1. (a) The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the General Fund to the Department of Veterans Affairs for allocation, during the 1989–90 fiscal year, for purposes of funding the activities of county veteran service officers pursuant to this section. Funds for allocation in future years shall be as provided in the annual Budget Act.

(b) Funds shall be disbursed each fiscal year on a pro rata basis to counties that have established and maintain a county veteran service officer in accordance with the staffing level and workload of each county veteran service officer under a formula based upon performance that shall be developed by the Department of Veterans Affairs for these purposes, and that shall allocate county funds in any fiscal year for county veterans service officers in an amount not less than the amount allocated in the 1988–89 fiscal year.

(c) The department shall annually determine the amount of new or increased monetary benefits paid to eligible veterans by the federal government attributable to the assistance of county veteran service officers. The department shall on or before January 1, prepare and transmit its determination for the preceding fiscal year to the Department of Finance and the Legislature. The Department of Finance shall review the department's determination in time to use the information in the

annual Budget Act for the budget of the department for the next fiscal year.

(d) (1) The Legislature finds and declares that 50 percent of the amount annually budgeted for county veteran service officers is approximately five million dollars ($5,000,000). The Legislature further finds and declares that it is an efficient and reasonable use of state funds to increase the annual budget for county veteran service officers in an amount not to exceed five million dollars ($5,000,000) if it is justified by the monetary benefits to the state's veterans attributable to the effort of these officers.

(2) It is the intent of the Legislature, after reviewing the department's determination in subdivision (c), to consider an increase in the annual budget for county veteran service officers in an amount not to exceed five million dollars ($5,000,000), if the monetary benefits to the state's veterans attributable to the assistance of county veteran service officers justify that increase in the budget.

(e) This section shall become operative January 1, 2011.

CHAPTER 139

An act to add and repeal Section 71093 of the Education Code, relating to the Compton Community College District, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 13, 2004. Filed with Secretary of State July 14, 2004.]

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

SECTION 1. (a) The Legislature finds and declares that the information collected by appropriate officials of the California Community Colleges clearly indicates that the Compton Community College District has failed to maintain fiscal integrity and warrants a conclusion that the district is unable to manage its own recovery.

(b) It is, therefore, the intent of the Legislature to provide the Board of Governors of the California Community Colleges with specific authority to ensure the stabilization of the financial condition of the Compton Community College District.

SEC. 2. Section 71093 is added to the Education Code, to read:

71093. Notwithstanding any other provision of law:

(a) The board of governors may authorize the chancellor to suspend, for a period of up to one year, the authority of the Board of Trustees of the Compton Community College District, or of any of the members of

that board, to exercise any powers or responsibilities or to take any official actions with respect to the management of the district, including any of the district's assets, contracts, expenditures, facilities, funds, personnel, or property. With the prior approval of the board of governors, the chancellor may renew a suspension under this section as many times, and as often as, he or she finds it necessary during the period of operation of this section.

(b) A suspension authorized by this section becomes effective immediately upon the delivery of a document to the administrative offices of the Compton Community College District that sets forth the finding of the chancellor that a suspension pursuant to this section is necessary for the establishment of fiscal integrity and security in that district.

(c) If and when the chancellor suspends the authority of the Board of Trustees of the Compton Community College District or any of its members pursuant to this section, the chancellor may appoint a special trustee as provided in paragraph (3) of subdivision (c) of Section 84040, at district expense, to manage the district. The chancellor is authorized to assume, and delegate to the special trustee, those powers and duties of the Board of Trustees of the Compton Community College District that the chancellor determines, with the approval of the board of governors, are necessary for the management of that district. The Board of Trustees of the Compton Community College District may not exercise any of the duties or powers assumed by the chancellor under this section. The chancellor may appoint as a special trustee under this section a person who has served in a similar capacity prior to the enactment of the act that adds this section. A special trustee appointed under this section shall serve at the pleasure of the chancellor.

(d) 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. 3. The Legislature finds and declares that, because of unique circumstances, applicable only to the Compton Community College District and set forth in Section 1 of this act, 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, the enactment of this special statute is necessary.

SEC. 4. In the event that the Board of Governors of the California Community Colleges determines that it may be necessary to maintain the authority granted in Section 71093 of the Education Code beyond the January 1, 2008, repeal date that is set forth in Section 2 of the act that adds this section, the board of governors shall make that recommendation, and its reasons therefor, in writing, to the Legislature and the Governor no later than July 1, 2007.

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

In order to preserve the fiscal integrity of the Compton Community College District, which is in imminent jeopardy, it is necessary that this act take effect immediately.

CHAPTER 140

An act to repeal Article 6 (commencing with Section 10237) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, relating to real estate.

[Approved by Governor July 13, 2004. Filed with Secretary of State July 14, 2004.]

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

SECTION 1. Article 6 (commencing with Section 10237) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, as added by Section 4 of Chapter 902 of the Statutes of 2003, is repealed.

CHAPTER 141

An act to amend Section 130311.5 of the Health and Safety Code, relating to medical information.

[Approved by Governor July 13, 2004. Filed with Secretary of State July 14, 2004.]

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

SECTION 1. Section 130311.5 of the Health and Safety Code is amended to read:

130311.5. (a) The office shall assume statewide leadership, coordination, direction, and oversight responsibilities for determining which provisions of state law concerning personal medical information are preempted by HIPAA pursuant to Section 160.203 of Title 45 of the Code of Federal Regulations. State entities impacted by HIPAA shall, at the direction of the office, do the following:

(1) Assist in determining which state laws concerning personal medical information are preempted by HIPAA.

(2) Conform to all determinations made by the office concerning HIPAA preemption issues.

(b) Any provision of state law concerning personal medical information that is determined by the office to be preempted by HIPAA pursuant to Section 160.203 of Title 45 of the Code of Federal Regulations, shall not be applicable to the extent of that preemption. The remainder of the provisions of state law concerning personal medical information shall remain in full force and effect.

(c) 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 142

An act to amend Section 2717 of the Public Resources Code, relating to surface mining.

[Approved by Governor July 13, 2004. Filed with Secretary of State July 14, 2004.]

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

SECTION 1. 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 Sections 10295.5 and 20676 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 or local 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.

CHAPTER 143

An act to amend Sections 14010, 14021, 14025, 14028, 14030, 14030.2, 14036, 14037, 14037.5, 14037.6, 14038, 14062, 14064, 14070, 14075, 14076, 14085, and 14086 of the Corporations Code, relating to small business financial development corporations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 13, 2004. Filed with Secretary of State July 14, 2004.]

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

SECTION 1. Section 14010 of the Corporations Code is amended to read:

14010. Unless the context otherwise requires, the definitions in this section govern the construction of this part.

(a) ''Corporation'' or ''the corporation'' means any nonprofit California small business financial development corporation created pursuant to this part.

(b) ''Financial institution'' means banking organizations including national banks and trust companies authorized to conduct business in California and state-chartered commercial banks, trust companies, and savings and loan associations.

(c) ''Financial company'' means banking organizations including national banks and trust companies, savings and loan associations, state

insurance companies, mutual insurance companies, and other banking, lending, retirement, and insurance organizations.

(d) ''Expansion Fund'' means the California Small Business Expansion Fund.

(e) Unless otherwise defined by the director by regulation, ''small business loan'' means a loan to a business defined as an eligible small business as set forth in Section 121.3-10 of Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations, including those businesses organized for agricultural purposes that create or retain employment as a result of the loan. From time to time, the director shall provide guidelines as to the preferred ratio of jobs created or retained to total funds borrowed for guidance to the corporations.

(f) ''Employment incentive loan'' means a loan to a qualified business, as defined in subdivision (h) of Section 7082 of the Government Code, or to a business located within an enterprise zone, as defined in subdivision (b) of Section 7072 of the Government Code.

(g) ''Loan committee'' means a committee appointed by the board of directors of a corporation to determine the course of action on a loan application pursuant to Section 14060.

(h) ''Board of directors'' means the board of directors of the corporation.

(i) ''Board'' means the California Small Business Board.

(j) ''Agency'' means the Business, Transportation and Housing Agency.

(k) ''Director'' means the person designated to this title by the secretary.

(*l*) ''Secretary'' means the Secretary of Business, Transportation and Housing Agency.

(m) ''Trust fund'' means the money from the expansion fund that is held in trust by a financial institution or a financial company. A trust fund is not a deposit of state funds and is not subject to the requirements of Section 16506 of the Government Code.

(n) ''Trust fund account'' means an account within the trust fund that is allocated to a particular small business financial development corporation for the purpose of paying loan defaults and claims on bond guarantees for a specific small business financial development corporation.

(o) ''Trustee'' is the lending institution or financial company selected by the office to hold and invest the trust fund. The agreement between the agency and the trustee shall not be construed to be a deposit of state funds.

SEC. 2. Section 14021 of the Corporations Code is amended to read:

14021. The board consists of the following membership:

(a) The Secretary of Business, Transportation and Housing or his or her designee.

(b) Six members appointed by the Governor, one of whom will serve as chair of the board, who are actively involved in the California small business community.

(c) Two persons actively involved in the business or agricultural communities, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules.

(d) Two Members of the Legislature or their designees, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules, shall serve on the board insofar as it does not conflict with the duties of the legislators.

SEC. 3. Section 14025 of the Corporations Code is amended to read:

14025. The director shall do all of the following:

(a) Administer this part.

(b) In accordance with program resources, stimulate the formation of corporations and the use of branch offices for the purposes of making this program accessible to all areas of the state.

(c) Expeditiously approve or disapprove the articles of incorporation and any subsequent amendments to the articles of incorporation of a corporation.

(d) Require each corporation to submit an annual written plan of operation.

(e) Review reports from the Department of Financial Institutions and inform corporations as to what corrective action is required.

(f) Examine, or cause to be examined, at any reasonable time, all books, records, and documents of every kind, and the physical properties of a corporation. The inspection shall include the right to make copies, extracts, and search records.

SEC. 4. Section 14028 of the Corporations Code is amended to read:

14028. (a) Upon a finding by the director that irreparable harm may occur if guarantee authority is not temporarily withdrawn from a corporation, the director may temporarily withdraw guarantee authority from a corporation. The notice of temporary withdrawal sent to the corporation shall specify the reasons for the action. As used in this section, "guarantee authority" means the authority to make or guarantee any loan that encumbers funds in a trust fund account or the expansion fund. The director shall make one of the determinations specified in subdivision (c) within 30 days of the effective date of the temporary withdrawal unless the corporation and the director mutually agree to an extension. The corporation shall have the opportunity to submit written material to the director addressing the items stated in the temporary withdrawal notice. If the director does not make any determinations within 30 days, the temporary withdrawal shall be negated. The

corporation's yearly contract shall remain in effect during the period of temporary withdrawal, and the corporation shall continue to receive reimbursement of necessary operating expenses.

(b) Failure of a corporation to substantially comply with the following may result in the suspension of a corporation:

(1) Regulations implementing the Small Business Development Corporation Law.

(2) The plan of operation specified in subdivision (d) of Section 14025.

(3) Fiscal and portfolio requirements, as contained in the fiscal and portfolio audits specified in Section 14027.

(4) Milestones and scope of work as contained in the annual contract between the corporation and the agency.

(c) Pursuant to subdivision (a) or (b), the director may do the following:

(1) Terminate the temporary withdrawal.

(2) Terminate the temporary withdrawal subject to the corporation's adoption of a specified remedial action plan.

(3) Temporarily withdraw, or continue to withdraw, guarantee authority until a specified time. This determination by the director requires a finding that the corporation has failed to comply with the Small Business Development Corporation Law.

(4) Suspend the corporation.

(5) Suspend the corporation, with suspension stayed until the corporation provides a remedial action plan to the director, and the director decides whether to repeal or implement the stayed suspension.

The determinations contained in paragraphs (4) and (5) require a finding that irreparable harm will occur unless the corporation is suspended.

(d) In considering a determination regarding the recommended suspension and possible remedial action plans, the director shall consider, along with other criteria as specified in subdivision (b), the corporation's history and past performance.

(e) Upon suspension of a corporation, the director shall transfer all funds, whether encumbered or not, in the trust fund account of the suspended corporation into either the expansion fund or temporarily transfer the funds to another corporation.

(f) If the director decides to take any action against the corporation pursuant to paragraphs (2) to (5), inclusive, of subdivision (c), the corporation shall be notified of the action 10 days before the effective date of the action. The corporation shall have the right to appeal the director's decision to the board within that 10-day period by sending notice to the director and to the chair of the board. Once the director receives notice that the action is being appealed, the director's action

shall be stayed except for temporary withdrawal of guarantee authority. Upon receipt of the notice, the director shall schedule a properly noticed board meeting within 30 days. The board may elect to take any of the actions listed in subdivision (g). The temporary withdrawal of corporation guarantee authority shall remain in effect until the board issues its decision.

(g) Pursuant to subdivision (f), the board may do any of the following:

(1) Terminate the action taken by the director.

(2) Modify the action taken by the director subject to the adoption by the corporation of a specified remedial action plan.

(3) Affirm the action taken by the director.

(h) Following suspension, the corporation may continue its existence as a nonprofit corporation pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2) but shall no longer be registered with the Secretary of State as a small business development corporation. A corporation shall not enjoy any of the benefits of a small business development corporation following suspension.

(i) The funds in the trust fund account of a corporation under temporary withdrawal shall be transferred to the expansion fund. Upon termination of the temporary withdrawal, unless the termination is caused by suspension, the funds of the corporation that were transferred to the expansion fund from the trust fund account shall be returned to the corporation's trust fund account, notwithstanding Section 14037. While the funds of a corporation's trust fund account reside in the expansion fund, use of the principal on the funds shall be governed by the implementing regulations specifying use of funds in the expansion fund. Interest on the funds moved from a corporation's trust fund account upon temporary withdrawal shall be limited to payment of the corporation's administrative expenses, as contained in the contract between the corporation and the agency.

SEC. 5. Section 14030 of the Corporations Code is amended to read:

14030. There is hereby created in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds. The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to Article 9 (commencing with Section 14070), administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee liability outstanding at any one time shall not exceed four times the amount of funds on deposit in the expansion fund, including each of the trust fund

accounts within the trust fund, unless the director has permitted a higher leverage ratio for an individual corporation pursuant to subdivision (b) of Section 14037.

SEC. 6. Section 14030.2 of the Corporations Code is amended to read:

14030.2. (a) The director may establish accounts within the expansion fund for loan guarantees and surety bond guarantees, including loan loss reserves. Each account is a legally separate account, and shall not be used to satisfy loan or surety bond guarantees or other obligations of another corporation. The director shall recommend whether the expansion fund and trust fund accounts are to be leveraged, and if so, by how much. Upon the request of the corporation, the director's decision may be repealed or modified by a board resolution.

(b) Annually, not later than January 1 of each year commencing January 1, 1996, the director shall prepare a report regarding the loss experience for the expansion fund for loan guarantees and surety bond guarantees for the preceding fiscal year. At a minimum, the report shall also include data regarding numbers of surety bond and loan guarantees awarded through the expansion fund, including ethnicity and gender data of participating contractors and other entities, and experience of surety insurer participants in the bond guarantee program. The director shall submit that report to the Secretary of Business, Transportation and Housing for transmission to the Governor and the Legislature.

SEC. 7. Section 14036 of the Corporations Code is amended to read:

14036. The expansion fund and trust fund are created solely for the purpose of receiving state, federal, or local government money, and other public or private money to make loans, guarantees, and restricted investments pursuant to this article. Funds in the expansion fund may be allocated by the director, with the approval of the Department of Finance, to the trust fund accounts.

SEC. 8. Section 14037 of the Corporations Code is amended to read:

14037. (a) The state shall not be liable or obligated in any way beyond the state money that is allocated and deposited in the trust fund account from state money and that is appropriated for these purposes.

(b) The director may reallocate funds held within a corporation's trust fund account.

(1) The director shall reallocate funds based on which corporation is most effectively using its guarantee funds. If funds are withdrawn from a less effective corporation as part of a reallocation, the office shall make that withdrawal only after giving consideration to that corporation's fiscal solvency, its ability to honor loan guarantee defaults, and its ability to maintain a viable presence within the region it serves. Reallocation of funds shall occur no more frequently than once per fiscal year. Any decision made by the director pursuant to this subdivision may be

appealed to the board. The board has authority to repeal or modify any decision to reallocate funds.

(2) The director may authorize a corporation to exceed the leverage ratio specified in Section 14030, subdivision (b) of Section 14070, and subdivision (a) of Section 14076 pending the annual reallocation of funds pursuant to this section. However, no corporation shall be permitted to exceed an outstanding guarantee liability of more than five times its portion of funds on deposit in the expansion fund.

SEC. 9. Section 14037.5 of the Corporations Code is amended to read:

14037.5. The Director of Finance, with the approval of the Governor, may transfer moneys in the Special Fund for Economic Uncertainties to the Small Business Expansion Fund for use as authorized by the director, in an amount necessary to make loan guarantees pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code.

SEC. 10. Section 14037.6 of the Corporations Code is amended to read:

14037.6. (a) (1) The Director of Finance, with the approval of the Governor, may transfer moneys in the Special Fund for Economic Uncertainties to the California Small Business Expansion Fund for use as authorized by the director, in an amount necessary to make loan guarantees pursuant to this chapter. However, no more than five million dollars ($5,000,000) may be transferred pursuant to this section in connection with any single declared disaster.

(2) The Director of Finance, or his or her designee, within 30 days of any transfer made pursuant to this section, shall provide notice of the amount of the transfer to the Chair of the Joint Legislative Budget Committee and the chair of the committee in each house that considers appropriations.

(b) The Governor should utilize this authority to prevent business insolvencies and loss of employment in an area affected by a state of emergency within the state and declared a disaster by the President of the United States or by the Administrator of the United States Small Business Administration, or by the United States Secretary of Agriculture or declared to be in a state of emergency by the Governor of California.

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

SEC. 11. Section 14038 of the Corporations Code is amended to read:

14038. (a) The funds in the expansion fund shall be paid out to trust fund accounts by the Treasurer on warrants drawn by the Controller

and requisitioned by the director, pursuant to the purposes of this chapter. The director may transfer funds allocated from the expansion fund to accounts, established solely to receive the funds, in lending institutions designated by the office to act as trustee. The lending institutions so designated shall be approved by the state for the receipt of state deposits. Interest earned on the trust fund accounts in lending institutions may be utilized by the corporations pursuant to the purposes of this chapter.

(b) Except as specified in subdivision (c), the director shall allocate and transfer money to trust fund accounts based on performance-based criteria. The criteria shall include, but not be limited to, the following:

(1) The default record of the corporation.

(2) The number and amount of loans guaranteed by a corporation.

(3) The number and amount of loans made by a corporation if state funds were used to make those loans.

(4) The number and amount of surety bonds guaranteed by a corporation.

Any decision made by the director pursuant to this subdivision may be appealed to the board within 15 days of notice of the proposed action. The board may repeal or modify any reallocation and transfer decisions made by the director.

(c) The criteria specified in subdivision (b) shall not apply to a corporation that has been in existence for five years or less. The director shall develop regulations specifying the basis for transferring account funds to those corporations that have been in existence for five years or less.

SEC. 12. Section 14062 of the Corporations Code is amended to read:

14062. Reasonable costs incurred by a corporation in the creation and maintenance of a central staff shall be paid to the corporation from state funds including a portion of the interest earned on the expansion fund and the corporation's trust fund account, if the corporation has a trust fund account, otherwise, on the expansion fund.

SEC. 13. Section 14064 of the Corporations Code is amended to read:

14064. The use of state funds paid out to the trust fund and the return on those funds from investment pursuant to Section 14038 is conditional pursuant to Sections 14028 and 14039. Each corporation shall enter into a written signed agreement with the state at the beginning of each fiscal year. The agreement shall govern the activities in which the corporations engage, the investment of state funds and its return, and the budgeted administrative expenses the corporations may incur. In the event the state and corporation do not reach an agreement, or the state finds the corporation has violated the terms of an active agreement, the state may

take action under Sections 14028 and 14039 or other action as appropriate. In the event the state and corporation do not reach agreement or the state finds the corporation has violated the terms of an active agreement, the corporation shall have no authority to withdraw or encumber the trust fund or the return of those funds by the issuance of guarantees, by incurring expenses against the fund and its return in any manner whatsoever, and the state may take action under Sections 14028 and 14039 or other action as appropriate. Any guarantee or other encumbrance made by the corporation in violation of this section shall be null and void, and neither the state nor the trust fund will be liable therefor.

SEC. 14. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's trust fund account.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the director, unless the director authorizes a higher leverage ratio for an individual corporation pursuant to subdivision (b) of Section 14037.

(c) The expansion fund and trust fund accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Department of Agriculture. The amount of funds available for direct farm lending shall be determined by the director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the trust funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the director may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan authorized by the director to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the agency loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount

at least equal to the requested disbursement. The loan between the agency and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the agency. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the agency is limited to the repayment received by the corporation from the borrower except in a case where the United States Department of Agriculture requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the agency if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the agency from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the agency for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund account shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars ($50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the agency that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the director pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

SEC. 15. Section 14075 of the Corporations Code is amended to read:

14075. (a) A corporation may, in an area declared to be in a state of emergency by the Governor, provide loan guarantees from funds allocated in Section 14037.5 to small businesses, small farms, nurseries, and agriculture-related enterprises that have suffered actual physical damage or significant economic injury as a result of the disaster.

(b) The agency may adopt regulations to implement the loan guarantee program authorized by this section. The agency may adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, and 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 within 180 days after their effective date unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(c) Allocations pursuant to subdivision (a) shall be deemed to be for extraordinary emergency or disaster response operations costs incurred by the agency.

SEC. 16. Section 14076 of the Corporations Code is amended to read:

14076. (a) It is the intent of the Legislature that the corporations make maximal use of their statutory authority to guarantee loans and surety bonds, including the authority to secure loans with a minimum loan loss reserve of only 25 percent, unless the agency authorizes a higher leverage ratio for an individual corporation pursuant to subdivision (b) of Section 14037, so that the financing needs of small business may be met as fully as possible within the limits of corporations' loan loss reserves. The agency shall report annually to the Legislature on the financial status of the corporations and their portfolio of loans and surety bonds guaranteed.

(b) Any corporation that serves an area declared to be in a state of emergency by the Governor or a disaster area by the President of the United States, the Administrator of the United States Small Business Administration, or the United States Secretary of Agriculture shall increase the portfolio of loan guarantees where the dollar amount of the loan is less than one hundred thousand dollars ($100,000), so that at least 15 percent of the dollar value of loans guaranteed by the corporation is for those loans. The corporation shall comply with this requirement within one year of the date the emergency or disaster is declared. Upon application of a corporation, the director may waive or modify the rule for the corporation if the corporation demonstrates that it made a good faith effort to comply and failed to locate lending institutions in the region that the corporation serves that are willing to make guaranteed loans in that amount.

SEC. 17. Section 14085 of the Corporations Code is amended to read:

14085. It shall be unlawful for the director or any person who is an officer, director, or employee of a corporation, or who is a member of a loan committee, or who is an employee of the agency to:

(a) Ask for, consent, or agree to receive, any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage, for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation, any loan, guarantee, financial, or other assistance from any corporation.

(b) Borrow money, property, or to benefit knowingly, directly or indirectly, from the use of the money, credit, or property of any corporation.

(c) Make, maintain, or attempt to make or maintain, a deposit of the funds of a corporation with any other corporation or association on condition, or with the understanding, expressed or implied, that the corporation or association receiving the deposit shall pay any money or make a loan or advance, directly or indirectly, to any person, partnership, joint venture, association, or corporation, other than to a corporation formed under this part.

SEC. 18. Section 14086 of the Corporations Code is amended to read:

14086. It shall be unlawful for the director or any person who is an officer or director of a corporation, or who is an employee of the agency, to purchase or receive, or to be otherwise interested in the purchase or receipt, directly or indirectly, of any asset of a corporation, without paying to the corporation the fair market value of the asset at the time of the transaction.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to reflect the current organization of state government as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 144

An act to amend Section 17951 of the Health and Safety Code, relating to building standards.

[Approved by Governor July 13, 2004. Filed with
Secretary of State July 14, 2004.]

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

SECTION 1. 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) If the local enforcement agency fails to conduct an inspection of permitted work for which permit fees have been charged pursuant to this section within 60 days of receiving notice of the completion of the permitted work, the permittee shall be entitled to reimbursement of the permit fees. The local enforcement agency shall disclose in clear language on each permit or on a document that accompanies the permit that the permittee may be entitled to reimbursement of permit fees pursuant to this subdivision.

(e) (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. 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 145

An act to amend Sections 7072, 7073, 7073.8, 7073.9, 7074, 7075, 7076, 7076.1, 7076.2, 7081, 7085, 7085.5, 7086, 7097, 7107, 7110, 7110.5, 7111, 7113, 7113.5, 7114, 7114.5 7115, and 7116 of the Government Code, relating to economic development, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 13, 2004. Filed with Secretary of State July 14, 2004.]

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

SECTION 1. Section 7072 of the Government Code is amended to read:

7072. For purposes of this chapter, the following definitions shall apply:

(a) ''Department'' means the Department of Housing and Community Development.

(b) ''Date of original designation'' means the earlier of the following:

(1) The date the eligible area receives designation as an enterprise zone by the department pursuant to this chapter.

(2) In the case of an enterprise zone deemed designated pursuant to subdivision (e) of Section 7073, the date the enterprise zone or program area received original designation by the former Trade and Commerce Agency pursuant to Chapter 12.8 (commencing with Section 7070) or

Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

(c) ''Eligible area'' means any of the following:

(1) An area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070), as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080), as it read prior to January 1, 1997.

(2) A geographic area that, based upon the determination of the department, fulfills at least one of the following:

(A) The proposed geographic area meets the Urban Development Action Grant criteria of the United States Department of Housing and Urban Development.

(B) The area within the proposed zone has experienced plant closures within the past two years affecting more than 100 workers.

(C) The city or county has submitted material to the department for a finding that the proposed geographic area meets criteria of economic distress related to those used in determining eligibility under the Urban Development Action Grant Program and is therefore an eligible area.

(D) The area within the proposed zone has a history of gang-related activity, whether or not crimes of violence have been committed.

(3) A geographic area that meets at least two of the following criteria:

(A) The census tracts within the proposed zone have an unemployment rate not less than 3 percentage points above the statewide average for the most recent calendar year as determined by the Employment Development Department.

(B) The county of the proposed zone has more than 70 percent of the children enrolled in public school participating in the federal free lunch program.

(C) The median household income for a family of four within the census tracts of the proposed zone does not exceed 80 percent of the statewide median income for the most recently available calendar year.

(d) ''Enterprise zone'' means any area within a city, county, or city and county that is designated as such by the department in accordance with Section 7073.

(e) ''Governing body'' means a county board of supervisors or a city council, as appropriate.

(f) ''High technology industries'' include, but are not limited to, the computer, biological engineering, electronics, and telecommunications industries.

(g) ''Resident,'' unless otherwise defined, means a person whose principal place of residence is within a targeted employment area.

(h) ''Targeted employment area'' means an area within a city, county, or city and county that is composed solely of those census tracts

designated by the United States Department of Housing and Urban Development as having at least 51 percent of its residents of low- or moderate-income levels, using either the most recent United States Department of Census data available at the time of the original enterprise zone application or the most recent census data available at the time the targeted employment area is designated to determine that eligibility. The purpose of a ''targeted employment area'' is to encourage businesses in an enterprise zone to hire eligible residents of certain geographic areas within a city, county, or city and county. A targeted employment area may be, but is not required to be, the same as all or part of an enterprise zone. A targeted employment area's boundaries need not be contiguous. A targeted employment area does not need to encompass each eligible census tract within a city, county, or city and county. The governing body of each city, county, or city and county that has jurisdiction of the enterprise zone shall identify those census tracts whose residents are in the most need of this employment targeting. Only those census tracts within the jurisdiction of the city, county, or city and county that has jurisdiction of the enterprise zone may be included in a targeted employment area.

At least a part of each eligible census tract within a targeted employment area shall be within the territorial jurisdiction of the city, county, or city and county that has jurisdiction for an enterprise zone. If an eligible census tract encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the designation of a targeted employment area. However, any one or more of those entities, by resolution or ordinance, may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application that apply to its jurisdiction, if the area is designated.

Each local governmental entity of each city, county, or city and county that has jurisdiction of an enterprise zone shall approve, by resolution or ordinance, the boundaries of its targeted employment area, regardless of whether a census tract within the proposed targeted employment area is outside the jurisdiction of the local governmental entity.

SEC. 2. Section 7073 of the Government Code is amended to read:

7073. (a) Except as provided in subdivision (e), any city, county, or city and county with an eligible area within its jurisdiction may complete a preliminary application for designation as an enterprise zone. The applying entity shall establish definitive boundaries for the proposed enterprise zone and the targeted employment area.

(b) (1) In designating enterprise zones, the department shall select from the applications submitted those proposed enterprise zones that, upon a comparison of all of the applications submitted, indicate that they propose the most effective, innovative, and comprehensive regulatory,

tax, program, and other incentives in attracting private sector investment in the zone proposed.

(2) For purposes of this subdivision, regulatory incentives include, but are not limited to, all of the following:

(A) The suspension or relaxation of locally originated or modified building codes, zoning laws, general development plans, or rent controls.

(B) The elimination or reduction of fees for applications, permits, and local government services.

(C) The establishment of a streamlined permit process.

(3) For purposes of this subdivision, tax incentives include, but are not limited to, the elimination or reduction of construction taxes or business license taxes.

(4) For the purposes of this subdivision, program and other incentives may include, but are not limited to, all of the following:

(A) The provision or expansion of infrastructure.

(B) The targeting of federal block grant moneys, including small cities, education, and health and welfare block grants.

(C) The targeting of economic development grants and loan moneys, including grant and loan moneys provided by the federal Urban Development Action Grant program and the federal Economic Development Administration.

(D) The targeting of state and federal job disadvantaged and vocational education grant moneys, including moneys provided by the federal Job Training Partnership Act of 1982 (Public Law 97-300).

(E) The targeting of federal or state transportation grant moneys.

(F) The targeting of federal or state low-income housing and rental assistance moneys.

(G) The use of tax allocation bonds, special assessment bonds, bonds under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5), industrial development bonds, revenue bonds, private activity bonds, housing bonds, bonds issued pursuant to the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5), certificates of participation, hospital bonds, redevelopment bonds, school bonds, and all special provisions provided for under federal tax law for enterprise community or empowerment zone bonds.

(5) In the process of designating new enterprise zones, the department shall take into consideration the location of existing zones and make every effort to locate new zones in a manner that will not adversely affect any existing zones.

(6) In designating new enterprise zones, the department shall include in its criteria the fact that jurisdictions have been declared disaster areas by the President of the United States within the last seven years.

(7) When reviewing and ranking new enterprise zone applications, the department shall give special consideration or bonus points, or both, to applications from jurisdictions that meet at least two of the following criteria:

(A) The percentage of households within the census tracts of the proposed enterprise zone area, the income of which is below the poverty level, is at least 17.5 percent.

(B) The average unemployment rate for the census tracts of the proposed enterprise zone area was not less than five percentage points above the statewide average for the most recent calendar year as determined by the Employment Development Department.

(C) The applicant jurisdiction has, and can document that it has, a unique distress factor affecting long-term economic development, including, but not limited to, resource depletion, plant closure, industry recession, natural disaster, or military base closure.

(c) In evaluating applications for designation, the department shall ensure that applications are not disqualified solely because of technical deficiencies, and shall provide applicants with an opportunity to correct the deficiencies. Applications shall be disqualified if the deficiencies are not corrected within two weeks.

(d) (1) Except as provided in paragraph (2), or upon dedesignation pursuant to subdivision (c) of Section 7076.1 or Section 7076.2, a designation made by the department shall be binding for a period of 15 years from the date of the original designation.

(2) The designation period for any zone designated pursuant to either Section 7073 or 7085 prior to 1990 may total 20 years, subject to possible dedesignation pursuant to subdivision (c) of Section 7076.1 or Section 7076.2, if the following requirements are met:

(A) The zone receives a superior or passing audit pursuant to subdivision (c) of Section 7076.1.

(B) The local jurisdictions comprising the zone submit an updated economic development plan to the department justifying the need for an additional five years by defining goals and objectives that still need to be achieved and indicating what actions are to be taken to achieve these goals and objectives.

(e) (1) Notwithstanding any other provision of law, any area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood economic development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, or any program area or part of a program area deemed designated as an enterprise zone pursuant to Section 7085.5 as it read prior to January 1, 1997, shall be deemed to be designated as an enterprise zone pursuant to this chapter. The effective

date of designation of the enterprise zone shall be that of the original designation of the enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or of the program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, and in no event may the total designation period exceed 15 years, except as provided in paragraph (2) of subdivision (d).

(2) Notwithstanding any other provision of law, any enterprise zone authorized, but not designated, pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, shall be allowed to complete the application process started pursuant to that chapter, and to receive final designation as an enterprise zone pursuant to this chapter.

(3) Notwithstanding any other provision of law, any expansion of a designated enterprise zone or program area authorized pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, shall be deemed to be authorized as an expansion for a designated enterprise zone pursuant to this chapter.

(4) No part of this chapter may be construed to require a new application for designation by an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or a targeted economic development area, neighborhood economic development area, or program area designated pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997.

(f) Notwithstanding any other provision of law, a city, county, or a city and county may designate a joint powers authority to administer the enterprise zone.

(g) No more than 42 enterprise zones may be designated at any one time pursuant to this chapter, including those deemed designated pursuant to subdivision (e). Upon the expiration or termination of a designation, the department is authorized to designate another enterprise zone to maintain a total of 42 enterprise zones.

SEC. 3. Section 7073.8 of the Government Code is amended to read:

7073.8. (a) The department shall designate up to two Manufacturing Enhancement Areas, as defined by Section 17053.47 of the Revenue and Taxation Code, requested by the governing boards of cities each of which shall meet at least the following criteria:

(1) The unemployment rate in the county in which the applicant is located has been at least three times the state average from 1990 to 1995, inclusive.

(2) The applicant city is, or portions of the city are, designated a federal enterprise community or empowerment zone pursuant to

Subchapter U (commencing with Section 1391) of Chapter 1 of Subtitle A of Title 26 of the United States Code.

(3) The applicant city is located in a Border Environment Cooperation Commission region as specified in Section 3473 of Title 19 of the United States Code.

(4) At least one of the following:

(A) The designated area has grown by less than 5 percent in population per year for each of the two years preceding the application date.

(B) The median household income for the designated area is under twenty-five thousand dollars ($25,000) per year.

(C) The designated area has a population of under 20,000 persons according to the 1990 federal census.

(D) The designated area is located in a rural community.

(5) An audit of the program shall be made at the end of the 5th and 10th year of its operation by the department with the cooperation of the local governing board. The audit shall be used to determine how effective the designation has been in attracting manufacturing facilities and creating new employment opportunities. Continuation of the designation is contingent on evidence of success of the program.

(b) For purposes of applying any provision of the Revenue and Taxation Code, any Manufacturing Enhancement Area designated pursuant to this section shall not be considered an enterprise zone designated pursuant to this chapter.

(c) The designation as a Manufacturing Enhancement Area pursuant to this section shall be binding for a period of 15 years, commencing January 1, 1998.

SEC. 4. Section 7073.9 of the Government Code is amended to read:

7073.9. Upon approval by the department of an application by a city, county, or city and county, a manufacturing enhancement area in Imperial County is expanded to the extent proposed, but in no event by more than a 200-acre site that is located in Imperial County and used for purposes of those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, to include definitive boundaries that are contiguous to the manufacturing enhancement area. The department shall approve an application for expansion of the manufacturing enhancement area if it determines that the proposed additional territory meets the criteria specified in Section 7073.8 to the same extent as the existing territory of the manufacturing area and if all of the following conditions are met:

(a) The governing body of each city in which the manufacturing enhancement is located approves an ordinance or resolution approving the proposed expansion of that area.

(b) The additional territory proposed to be added to the manufacturing enhancement area is zoned for industrial or commercial use.

(c) Basic infrastructure, including, but not limited to, gas, water, electrical service, and sewer systems is available to the additional territory proposed to be added to the manufacturing enhancement area.

SEC. 5. Section 7074 of the Government Code is amended to read:

7074. (a) In the case of any enterprise zone, including an enterprise zone formerly designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or as a program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, a city, county, or city and county may propose that the enterprise zone be expanded by 15 percent to include definitive boundaries that are contiguous to the enterprise zone.

(b) The department may approve an enterprise zone expansion proposed pursuant to this section based on the following criteria:

(1) Each of the adjacent jurisdictions' governing bodies approves the expansion by adoption of an ordinance or resolution.

(2) Land included within the proposed expansion is zoned for industrial or commercial use.

(3) Basic infrastructure, including, but not limited to, gas, water, electrical service, and sewer systems, is available to the area that would be included in the expansion.

(c) An enterprise zone may propose to use an eligible expansion allotment to expand into an adjacent jurisdiction pursuant to this section if the department finds that all of the following conditions exist:

(1) The governing body of the local agency with jurisdiction over the existing enterprise zone and the governing body of the local agency with jurisdiction over the proposed expansion area each approve the expansion by adoption of an ordinance or resolution. The ordinance or resolution by the jurisdiction containing the proposed expansion area shall indicate that the jurisdiction will provide the same or equivalent local incentives as provided by the jurisdiction of the existing enterprise zone.

(2) (A) Land included within the proposed expansion is zoned for industrial or commercial use.

(B) An expansion area may contain noncommercial or nonindustrial land only if that land is a right-of-way and is needed to meet the requirement for a contiguous expansion between an existing enterprise zone and a proposed expansion area.

(3) Basic infrastructure, including, but not limited to, gas, water, electrical service, and sewer systems, is available to the area that would be included in the expansion.

(4) The expansion area is contiguous to the existing enterprise zone.

(d) (1) Except as otherwise provided in paragraph (2), in no event shall an enterprise zone be permitted to expand more than 15 percent in size from its size on the date of original designation, including any expansion authorized pursuant to Chapter 12.8 (commencing with Section 7070), or Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

(2) If an enterprise zone, on the date of original designation, is no greater than 13 square miles, it may be permitted to expand up to 20 percent in size from its size on the date of original designation.

SEC. 6. Section 7075 of the Government Code is amended to read:

7075. (a) Upon filing a preliminary application, the applicant, as lead agency, shall submit an initial study and a notice of preparation to the department, the state clearinghouse, and all responsible agencies.

(b) Only a city, county, or city and county chosen by the department as a final applicant shall prepare, or cause to be prepared, a draft environmental impact report, which shall set forth the potential environmental impacts of any and all development planned within the enterprise zone. The draft environmental impact report shall be submitted to the department with the final application.

(c) Prior to final designation by the department, the applicant shall complete and certify the final environmental impact report.

(d) The environmental impact report shall comply with the information disclosure provisions and the substantive requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

(e) No further environmental impact report shall be required if the effects of the project were any of the following:

(1) Mitigated or avoided as a result of the environmental impact report prepared for the area.

(2) Examined at a sufficient level of detail in the environmental impact report for the area to enable those effects to be mitigated or avoided by specific site revisions, the imposition of conditions, or other means in connection with the designation of the area.

(3) Identified in the final environmental impact report and the lead agency made written findings that specific economic, social, or other considerations made the mitigation measures or project alternatives identified in the final environmental impact report unfeasible.

SEC. 7. Section 7076 of the Government Code is amended to read:

7076. (a) (1) The department shall provide technical assistance to the enterprise zones designated pursuant to this chapter with respect to all of the following activities:

(A) Furnish limited onsite assistance to the enterprise zones when appropriate.

(B) Ensure that the locality has developed a method to make residents, businesses, and neighborhood organizations aware of the opportunities to participate in the program.

(C) Help the locality develop a marketing program for the enterprise zone.

(D) Coordinate activities of other state agencies regarding the enterprise zones.

(E) Monitor the progress of the program.

(F) Help businesses to participate in the program.

(2) Notwithstanding existing law, the provision of services in subparagraphs (A) to (F), inclusive, shall be a high priority of the department.

(3) The department may, at its discretion, undertake other activities in providing management and technical assistance for successful implementation of this chapter.

(b) The applicant shall be required to begin implementation of the enterprise zone plan contained in the final application within six months after notification of final designation or the enterprise zone shall lose its designation.

SEC. 8. Section 7076.1 of the Government Code is amended to read:

7076.1. (a) The department may audit the program of any jurisdiction in any designated zone at any time during the duration of the designation, as appropriate, or at least every five years from the date of designation or the operative date of this section, whichever is the latest. The matters to be examined in the course of an audit shall include an examination of the progress made by the zone toward meeting the goals, objectives, and commitments set forth in its original application and the department's memorandum of understanding with the zone.

(b) The department shall, for each audit, determine a result of superior, pass, or fail in accordance with subdivision (c). The results of each audit shall be based upon the success of the zone in making substantial and sustained efforts since the later of its designation or last audit to meet the standards, criteria, and conditions contained in the application and the memorandum of understanding (MOU) between the department and the zone, as may be amended pursuant to the agreement of the zone and the department. In each audit, the department shall focus upon the zone's use of the marketing plan, local incentives, financing programs, job development, and program management as described in the application and the MOU. The department shall also evaluate the vouchering plan, zone staff levels, zone budget, and elements unique to each application.

(c) For purposes of subdivision (b), an audit determination of superior, pass, or fail shall be made in accordance with the following:

(1) A zone will be determined to be superior if each jurisdiction comprising the zone does all of the following:

(A) Meets 100 percent of its goals, objectives, and commitments as defined in its application or most recent audit, and as determined by the department in consultation with the zone. An equivalent or similar commitment may be substituted for an existing commitment of a zone if it is determined by the department that an original commitment was not realistically practical or is no longer relevant.

(B) Demonstrates that it has reviewed and updated its goals, objectives, and commitments as defined in its original application or most recent audit.

(C) Identifies to the department's satisfaction that it has incorporated economic development commitments in addition to those commitments previously made in its application.

(2) (A) A zone will be determined to be passing if each jurisdiction comprising the zone meets or exceeds 75 percent of its goals, objectives, or commitments as defined in its original application or audit, and as determined by the department in consultation with the zone. An equivalent or similar commitment may be substituted for an existing commitment of a zone if it is determined by the department that an original commitment was not realistically practical or is no longer relevant.

(B) Any zone that is determined to be passing may appeal in writing to the department for a determination of superior. Only one appeal may be filed pursuant to this subparagraph with respect to a determination by the department, and may be filed no later than 30 days after the zone's receipt of the determination to which the appeal pertains. The department shall respond in writing to any appeal that is properly filed pursuant to this subparagraph within 60 days of the date of that filing.

(3) (A) A zone will be determined to be failing if any jurisdiction comprising the zone fails to meet or exceed 75 percent of its goals, objectives, or commitments as defined in its original application or audit, and as determined by the department in consultation with the zone. An equivalent or similar commitment may be substituted for an existing commitment of a zone if it is determined by the department that an original commitment was not realistically practical or is no longer relevant.

(B) Any zone that is determined to be failing shall enter into a written agreement with the department that specifies those items that the zone is required to remedy or improve. Failure of the zone and the department to negotiate and enter into a written agreement as so described within 60 days of the last day upon which the department is required to deliver a response letter pursuant to subparagraph (C) shall result in the dedesignation of the zone on January 1 immediately following the

department's written notice of dedesignation to the zone. A written agreement entered into pursuant to this subparagraph shall be for a six-month period. If, upon the expiration of the agreement, the department determines that the zone has not met or implemented at least 75 percent of the conditions set forth in the agreement, the department shall, after immediately providing written notification to each jurisdiction comprising the zone that the zone is to be dedesignated, dedesignate the zone effective on the first day of the month next following the date upon which the agreement expired. If, upon expiration of the agreement, the department determines that the zone has met or implemented at least 75 percent of the conditions set forth in the agreement, the department shall do either of the following:

(i) Allow the zone an additional year, or a longer period in the department's discretion, to meet or implement those conditions in their entirety.

(ii) Pursuant to written notice provided immediately to each jurisdiction that comprises the zone that the zone is to be dedesignated, dedesignate the zone effective on January 1 immediately following the date of the department's written notification of dedesignation to those jurisdictions.

Any business, located within any jurisdiction that comprises a zone that has been dedesignated, that has elected to avail itself of any state tax incentive specifically applicable to a zone for any taxable or income year beginning prior to the dedesignation of the zone may, to the extent the business is otherwise still eligible for those incentives, continue to avail itself of those incentives for a period equal to the remaining life of the zone. However, any business, located within any jurisdiction that comprises a zone that has been dedesignated, that has not availed itself of any state tax incentive in the manner described in the preceding sentence may not, after dedesignation of the zone, avail itself of any state incentive specifically applicable to a zone.

(d) (1) For purposes of this section, ''dedesignation'' means that a zone is no longer a zone for purposes of either Section 7073 or 7085.

(2) Upon notification by the department of the dedesignation of a zone and the end of the appeal period with respect to that dedesignation, the department shall initiate an application process for a new designation as provided in Section 7073.

SEC. 9. Section 7076.2 of the Government Code is amended to read:

7076.2. (a) The department shall dedesignate a zone on the first day of the month immediately following the date upon which the department has received from each jurisdiction comprising the zone a resolution, adopted by the governing body of that jurisdiction, requesting the dedesignation of the zone. Upon the dedesignation of a zone pursuant to

this paragraph, the department shall initiate an application process for a new designation as provided in Section 7073.

(b) The department shall exclude from a zone that portion of that zone that is located within a jurisdiction on the first day of the month immediately following the date upon which the department receives from that jurisdiction a resolution, adopted by the governing body of that jurisdiction, requesting that exclusion. Any jurisdiction that provides notice to the department pursuant to this paragraph shall concurrently provide a copy of that notice to all other jurisdictions that comprise the affected zone.

(c) Any business, located within any jurisdiction that comprises a zone that has been dedesignated or within a jurisdiction that has excluded itself from a zone, that has elected to avail itself of any state tax incentive specifically applicable to a zone for any taxable or income year beginning prior to the dedesignation of the zone or the exclusion of a jurisdiction comprising the zone may, to the extent the business is still otherwise eligible for those incentives, continue to avail itself of those incentives for a period equal to the remaining life of the zone. However, any business, located within any jurisdiction that comprises a zone that has been dedesignated or within a jurisdiction that has excluded itself from a zone, that has not availed itself of any state tax incentive in the manner described in the preceding sentence may not, after dedesignation of the zone, avail itself of any state incentive specifically applicable to a zone.

(d) For purposes of this section, ''dedesignation'' is defined as set forth in paragraph (1) of subdivision (d) of Section 7076.1.

SEC. 10. Section 7081 of the Government Code is amended to read:

7081. Notwithstanding any other provision of state law, and to the extent permitted by federal law, the Employment Development Department and the State Department of Education shall give high priority to the training of unemployed individuals who reside in a targeted employment area or a designated enterprise zone. The department may assist localities in designating local business, labor, and education consortia to broker activities between the employment community and educational and training institutions. Any available discretionary funds may be used to assist the creation of those consortia.

SEC. 11. Section 7085 of the Government Code is amended to read:

7085. (a) The department shall submit a report to the Legislature every five years beginning January 1, 1998, that evaluates the effect of the program on employment, investment, and incomes, and on state and local tax revenues in designated enterprise zones. The report shall include a department review of the progress and effectiveness of each enterprise zone. The Franchise Tax Board shall make available to the department and the Legislature aggregate information on the dollar

value of enterprise zone tax credits that are claimed each year by businesses.

(b) An enterprise zone governing body shall provide information at the request of the department as necessary for the department to prepare the report required pursuant to subdivision (a).

SEC. 12. Section 7085.5 of the Government Code is amended to read:

7085.5. The Franchise Tax Board shall annually make available to the department and the Legislature information, by enterprise zone and by city or county, on the dollar value of the enterprise zone tax credits that are claimed each year by businesses and shall design and distribute forms and instructions that will allow the following information to be accessible:

(a) The number of jobs for which the hiring credits are claimed.

(b) The number of new employees for which hiring credits are claimed.

(c) The number of businesses claiming each individual tax credit.

(d) The nature of the business claiming each individual tax credit.

(e) The distribution of zone tax incentives among industry groups.

(f) The distribution of zone tax incentives by the annual receipts and asset value of the business claiming each individual tax credit.

(g) Any other information that the Franchise Tax Board and the department deem to be important in determining the cost to, and benefit derived by, the taxpayers of the state.

SEC. 13. Section 7086 of the Government Code is amended to read:

7086. (a) The department shall design, develop, and make available the applications and the criteria for selection of enterprise zones pursuant to Section 7073, and shall adopt all regulations necessary to carry out this chapter.

(b) The department shall adopt regulations concerning the designation procedures and application process as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall not remain in effect more than 120 days unless the department complies with all provisions of Chapter 3.5 as required by subdivision (e) of Section 11346.1.

(c) The Department of General Services, with the cooperation of the Employment Development Department, the Department of Industrial Relations, and the Office of Planning and Research, and under the direction of the State and Consumer Services Agency, shall adopt

appropriate rules, regulations, and guidelines to implement Section 7084.

SEC. 14. Section 7097 of the Government Code is amended to read:

7097. (a) The Department of Housing and Community Development shall rank applicant communities and shall designate the first ranking community whose governing body is applying as a community to be designated as a targeted tax area which meets at least four of the five following criteria:

(1) The average unemployment rate in the applicant community exceeded 7.5 percent in 1995.

(2) The average unemployment rate in the applicant community exceeded 7.5 percent in 1996.

(3) The median family income in the applicant community does not exceed thirty-two thousand seven hundred dollars ($32,700).

(4) The percentage of persons in the applicant community below the poverty level is at least 17.5 percent.

(5) The applicant community ranks in the top quartile, among California counties, in the percentage of population receiving Aid for Families with Dependent Children benefits, based on the Cash Grant Caseload Movement and Expenditures Report, July 1995 to June 1996.

(b) For purposes of applying any provision of the Revenue and Taxation Code, any targeted tax area designated pursuant to this section shall not be considered an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070).

(c) Except as provided in subdivision (e), the designation as a targeted tax area pursuant to this section shall be binding for a period of 15 years, commencing January 1, 1998.

(d) Only one targeted tax area shall be designated by the department, and a renewed or replacement designation shall not be made after the initial designation expires or is revoked.

(e) An audit of the program's operation shall be made by the department on a periodic basis with the cooperation of the local governing board. If the department determines that the local jurisdiction is not complying with the terms of the memorandum of understanding, the department shall provide written notice of the program deficiencies and the governing body shall be given six months to correct the deficiencies. If the deficiencies are not corrected, the designation shall be revoked.

(f) A county and any cities within the county may apply jointly as a community if the combination of the jurisdictions meets the criteria.

SEC. 15. Section 7107 of the Government Code is amended to read:

7107. For purposes of this chapter:

(a) ''Department'' means the Department of Housing and Community Development.

(b) ''Base'' means a federal military installation or subinstallation as defined by regulations of the Departments of the Army, Navy, and Air Force, and other defense activities.

(c) ''Critically needed hazardous waste facilities'' means a facility that will provide necessary offsite treatment capacity for which there is a substantial shortfall or lack of capacity. This shortfall shall be as identified in any of the following documents:

(1) The State Hazardous Waste Management Plan.

(2) The State's Capacity Assurance Plan required by federal law.

(3) Other reports of the Department of Toxic Substances Control.

(d) ''Downsizing'' means a significant reduction in federal funding, personnel, and equipment on a base.

(e) ''Economic development plan'' includes, but is not limited to, a marketing plan, a job development plan, and an analysis of infrastructure.

(f) ''Eligible area'' means a geographic area meeting the criteria described in Section 7111.

(g) ''Governing body'' means a city, county, city and county, joint powers agency, council, or board, as appropriate.

(h) ''Local agency military base recovery area'' means any military base or former military base or portion thereof which is designated in accordance with the provisions of Section 7114.

(i) ''Region One'' includes the following counties: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Mendocino, Tehama, Glenn, Butte, Plumas, Marin, Napa, Sonoma, Lake, Colusa, Sutter, Yuba, Nevada, Sierra, Placer, Yolo, Solano, Sacramento, El Dorado, and Amador.

(j) ''Region Two'' includes the following counties: Contra Costa, San Francisco, Santa Cruz, Santa Clara, Alameda, and San Mateo.

(k) ''Region Three'' includes the following counties: Monterey, San Benito, San Joaquin, Merced, Fresno, Stanislaus, Kings, Madera, Mariposa, Tuolumne, Calaveras, Alpine, Mono, Inyo, and Tulare.

(*l*) ''Region Four'' includes the following counties: San Diego, San Bernardino, Riverside, and Imperial.

(m) ''Region Five'' includes the following counties: Los Angeles, Orange, Ventura, Santa Barbara, San Luis Obispo, and Kern.

(n)''Reuse plan'' includes, but is not limited to, an evaluation of community goals for the future as they relate to potential use of the former military facilities and land areas, market studies or surveys to evaluate the regional economic setting, trends, and pressures affecting base reuse, surveys or inventories of on-base facilities to determine their condition, quality and reuse potential and liability, development of reuse alternatives responding to market conditions, community goals, and reuse of potential of existing assets, review of alternative strategies with

the community at large and consensus building of a preferred development strategy.

SEC. 16. Section 7110 of the Government Code is amended to read:

7110. (a) The governing body may, either by ordinance or resolution, propose an eligible area within its respective jurisdiction as the geographic area for a local agency military base recovery area. A county may propose an area within the unincorporated area as the geographic area for a local agency military base recovery area, but shall not propose an area within an incorporated area. A city may propose an area within the incorporated area as the geographic area for a local agency military base recovery area, but may not propose an area within an unincorporated area. A city and county may propose an area within the city and county for designation as a local agency military base recovery area. This proposed geographic area shall be based upon findings by the governing body that the area meets the criteria in Section 7111 and that the designation as a local agency military base recovery area is necessary in order to assist in attracting private sector investment in the area. The governing body shall establish definitive boundaries, not to exceed former base property, for the area to be included in the application for designation and, if designated by the agency, the designation shall be binding for the period described in Section 7110.5.

(b) Following the application for designation of a local agency military base recovery area, the governing body shall apply to the department for designation. The department shall adopt regulations and guidelines concerning the necessary contents of each application for designation.

(c) Any governing body with an eligible area within its jurisdiction may complete a preliminary application.

(d) In designating a local agency military base recovery area, the department shall select from the applications submitted those proposed local agency military base recovery areas which, based on a comparison of those applications, propose the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives to attract private sector investment in the proposed local agency military base recovery area. For purposes of this paragraph:

(1) ''Regulatory incentives'' include, but are not limited to, the elimination or reduction of fees for applications, permits, and local government facilities and services; and the establishment of a streamlined permit process.

(2) ''Tax incentives'' include, but are not limited to, the elimination or reduction of business license taxes and utility user taxes.

(3) ''Program'' and ''other incentives'' may include, but are not limited to the provision or expansion of infrastructure; the targeting of federal block grant moneys, including small cities, education, and health

and welfare block grants; the targeting of economic development grants and loan moneys, including grant and loan moneys provided by the federal Urban Development Action Grant program and the federal Economic Development Administration; the targeting of state and federal job disadvantaged and vocational education grant moneys, including moneys provided by the federal Job Partnership Training Act of 1982; the targeting of federal or state transportation grant moneys; and the targeting of federal or state low-income housing and rental assistance moneys.

(e) The department shall also consider the following:

(1) The unemployment rate for the area under the jurisdiction of the local governing body.

(2) The number of civilian and military jobs lost as a result of the base closure when compared to the number of jobs available in the area.

(3) Whether the local agency has a comprehensive economic development plan that is consistent with the reuse plan.

(4) Whether the local agency has a prepared plan for appropriate hazardous waste management facilities as an integral part of the base and shall give extra consideration for any plan which includes provisions for critically needed hazardous waste facilities.

(5) The governing body has resolved, as part of the reuse plan approval, to prepare a program environmental impact report that is in compliance with the California Environmental Quality Control Act and associated guidelines.

(f) In evaluating applications for designation, the department shall ensure that applications are not disqualified solely because of technical deficiencies and shall provide applicants with an opportunity to correct the deficiencies. Applications shall be disqualified if the deficiencies are not corrected within two weeks. The department shall provide technical assistance to applicants that request it.

SEC. 17. Section 7110.5 of the Government Code is amended to read:

7110.5. A designation of a local agency military base recovery area pursuant to Section 7110 shall be for an eight-year period, that shall expire eight years after the department has determined that the later of the following conditions has been met:

(a) The governing body has notified the department that legal title to the economic development parcels at the former base has been transferred to the governing body and, in cases in which early transfer authority has been exercised, the terms and conditions necessary for satisfying the requirements of Section 9601 and following of Title 42 of the United States Code are met and regulatory closure has occurred.

(b) The governing body has notified the department that vouchers have been issued to an employer that has entered into a lease or received

title to property located within the local agency military base recovery area.

SEC. 18. Section 7111 of the Government Code is amended to read:

7111. (a) An eligible area is a military base or former military base which, based upon the determination of the department, fulfills the following:

(1) The base is scheduled for closure or downsizing by a base closure act.

(2) The governing body has approved a reuse plan for the base.

(b) A base is ineligible if any portion of the base is included in an enterprise zone established pursuant to Chapter 12.8 (commencing with Section 7070) or an area established pursuant to Chapter 12.9 (commencing with Section 7080).

SEC. 19. Section 7113 of the Government Code is amended to read:

7113. (a) Upon filing a preliminary application, the applicant, as lead agency, shall submit an initial study and a notice of preparation to the department, the state clearinghouse, all responsible agencies, and any public agency that has jurisdiction by law with respect to the project.

(b) A governing body selected by the department as a final applicant shall prepare, or cause to be prepared, an environmental impact report pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code for any and all projects planned within the local agency military base recovery area. Whenever a project requires compliance with both the California Environmental Quality Act and the National Environmental Policy Act, the lead agency shall, to the greatest extent feasible, prepare a joint environmental impact report and environmental impact statement. The draft environmental impact report shall be submitted to the department with the final application.

(c) Prior to final designation by the department, the applicant shall complete and certify the final environmental impact report and act on the project.

SEC. 20. Section 7113.5 of the Government Code is amended to read:

7113.5. When selecting successful applicants for a local agency military base recovery area, the department shall limit the number of local agency military base recovery areas to eight, which shall be awarded by the following criteria, in addition to the criteria set forth in Section 7111.

(a) The department shall designate at least one local agency military base recovery area in each region.

(b) If the department finds that none of the applications in a competition are satisfactory in meeting the selection criteria, the department shall inform all applicants on the deficiencies in their application and shall reopen competition for a period not to exceed six

months. Local governing bodies who originally applied, may reapply in the new competition.

(c) If, after following the procedures specified in (c), the agency determines that there are no applications that are satisfactory, the department may not designate a local agency military base recovery area.

(d) Eligible bases shall compete for approval of a local agency military base recovery area against other eligible bases. In any event, not less than one area shall be designated from each region.

SEC. 21. Section 7114 of the Government Code is amended to read:

7114. (a) The department shall design, develop, and make available the applications and the criteria for selection of a local agency military base recovery area, and shall adopt all regulations necessary to carry out this chapter.

(b) The applications, selection criteria, and all necessary regulations for designation shall be adopted by the department and made available not later than 120 days following the effective date of this chapter.

(c) The department shall adopt regulations concerning the designation procedures and application process as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. For the purpose of that chapter, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare, notwithstanding subdivision (f) of Section 11346.1. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall not remain in effect more than 180 days unless the department complies with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 as required by subdivision (e) of Section 11346.1.

SEC. 22. Section 7114.5 of the Government Code is amended to read:

7114.5. (a) The department shall provide, as a high priority, to a designated local agency military base recovery area:

(1) Technical assistance for state and federal grant applications as requested by the governing body.

(2) Technical assistance for small business loans through the State of California and the federal government as requested by the governing body.

(b) The California Environmental Protection Agency shall provide, as a high priority, to a designated local agency military base recovery area technical permit assistance for those permits that fall under the jurisdiction of the agency as requested by the governing body.

(c) The Office of Permit Assistance shall provide, as a high priority, to a designated local agency military base recovery area technical assistance on permits as requested by the governing body.

SEC. 23. Section 7115 of the Government Code is amended to read:

7115. The department shall submit a report to the Legislature on or before July 1, 1996, and every year thereafter, which:

(a) Evaluates the effect of the program on employment, investment, and incomes, and on state and local tax revenues in designated local agency military base recovery areas.

(b) Indicates whether the number of existing local agency military base recovery areas should be expanded, by how many, and under what applicable time schedules.

(c) Information from the Franchise Tax Board on the dollar value of local agency military base recovery area tax credits that are claimed each year by businesses.

SEC. 24. Section 7116 of the Government Code is amended to read:

7116. (a) A local agency military base recovery area governing body shall provide information at the request of the department as necessary for the department to prepare the report required pursuant to Section 7115.

(b) A local agency military base recovery area governing body shall provide information at the request of the department as necessary for the department to determine whether the governing body is complying with the terms of the approved application.

(c) If the department determines that a local agency military base recovery area governing body is not complying with the terms of the approved application for designation, the department shall provide written notice of the program deficiencies and the governing body shall be given six months to correct the deficiencies.

(d) The department shall revoke the designation of a local agency military base recovery area if the department determines that the governing body granted the designation has not complied with the terms of the approved application for designation within six months after written notice pursuant to subdivision (c), and shall not be considered a local agency military base recovery area until the deficiencies are corrected.

(e) Any companies located in the local agency military base recovery area shall not be penalized during any period of revocation and may continue to operate with incentives provided pursuant to this chapter.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure at the earliest possible time the continued operation of the Targeted Tax Areas program and the Local Agency Military Base Recovery Act, it is necessary that this act take effect immediately.

CHAPTER 146

An act to amend Section 42815 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor July 13, 2004. Filed with Secretary of State July 14, 2004.]

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 ''Agriculture Omnibus Act of 2004.''

SEC. 2. Section 42815 of the Food and Agricultural Code is amended to read:

42815. This article shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 147

An act to add and repeal Section 53856.2 of the Government Code, relating to temporary borrowing by the City of Richmond, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 14, 2004. Filed with Secretary of State July 14, 2004.]

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 the City of Richmond shall continue to explore innovative cost-cutting measures, including a charter amendment to reduce the size of the city council.

SEC. 2. Section 53856.2 is added to the Government Code, to read:

53856.2. (a) The City of Richmond may issue notes pursuant to this section. Except to the extent inconsistent with this section, notes issued pursuant to this section shall also be subject to this article.

(b) The resolution of the City of Richmond providing for the issuance of the notes pursuant to this section shall provide that the Auditor of the County of Contra Costa shall make one or more transfers directly to the trustee or fiscal agent for the notes issued pursuant to the resolution out of the property tax revenues apportioned to the City of Richmond pursuant to Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, except for amounts collected in respect of taxes levied pursuant to subdivision (b) of Section 1 of Article XIII A of the California Constitution, in the amounts and at the times necessary to fund any required set-asides to pay principal and interest on the notes, as specified in the resolution. The transfers shall in no event be made earlier than January 15 in any fiscal year. No transfer may exceed the amount available to be apportioned to the City of Richmond from property tax revenues at the time the transfer is required to be made.

(c) In the event that, prior to the date of any transfer specified in subdivision (b), property tax revenues are available to be apportioned to the City of Richmond in excess of the amount of the transfer, the Auditor of the County of Contra Costa shall pay the excess amounts to the City of Richmond only if the Auditor of the County of Contra Costa determines that the remaining property tax revenue available to be apportioned to the City of Richmond during the fiscal year will be sufficient to make the transfers specified in subdivision (b).

(d) The City of Richmond shall send a certified copy of the resolution providing for the issuance of the notes pursuant to this section to the Auditor of the County of Contra Costa. The Auditor of the County of Contra Costa shall make the transfers in the amounts and at the times specified in this section.

(e) The trustee or fiscal agent for the notes issued pursuant to this section shall have a lien on the property taxes collected by the County of Contra Costa that are apportioned to the City of Richmond pursuant to Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, except for amounts collected in respect of taxes levied pursuant to subdivision (b) of Section 1 of Article XIII A of the California Constitution, the rights of the City of Richmond to receive these apportioned property taxes, the amounts transferred by the Auditor of the County of Contra Costa pursuant to this section, and the proceeds of all of the foregoing property. This lien shall secure the payment of all amounts due on the notes. This lien shall arise by operation of this section automatically upon the issuance of the notes without the need for any action on the part of any person. This lien shall be valid, binding, perfected, and enforceable against the City of Richmond, its successors, creditors, purchasers, and all others asserting rights in the property described in this paragraph, irrespective of whether

those persons have notice of the lien, irrespective of the fact that the property subject to the lien may be commingled with other property, and without the need for physical delivery, recordation, public notice, or any other act. This lien shall be a first priority lien on the property described in this paragraph.

(f) This section shall remain in effect only until July 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2006, deletes or extends that date.

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 City of Richmond. The facts constituting the special circumstances are:

The City of Richmond is facing a critical cashflow shortfall. The city needs the added security measures in this act to be able to issue short-term notes to adequately manage its short-term cashflow.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The City of Richmond is facing a critical cashflow shortfall and may need to issue short-term notes early in the 2004–05 fiscal year. Further, there have been recent downgrades in the city's credit ratings. In order to allow the notes to be adequately secured and marketable at reasonable interest rates at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 148

An act to amend Sections 14148.03 and 14148.04 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 14148.03 of the Welfare and Institutions Code is amended 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) The department shall implement the Prenatal Gateway within 12 months after the date upon which both of the conditions required under subdivision (e) have occurred.

(g) 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. 2. Section 14148.04 of the Welfare and Institutions Code is amended 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) The department shall implement the Newborn Hospital Gateway within 12 months after the date upon which both of the conditions required under subdivision (d) have occurred.

(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.

CHAPTER 149

An act to amend Section 33378 of the Health and Safety Code, relating to redevelopment.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 33378 of the Health and Safety Code is amended to read:

33378. (a) With respect to any ordinance that is subject to referendum pursuant to Sections 33365 and 33450, the language of the statement of the ballot measure shall set forth with clarity and in language understandable to the average person that a ''Yes'' vote is a vote in favor of adoption or amendment of the redevelopment plan and a ''No'' vote is a vote against the adoption or amendment of the redevelopment plan.

(b) Notwithstanding any other provision of law, including the charter of any city or city and county, referendum petitions circulated in cities or counties over 500,000 population shall bear valid signatures numbering not less than 10 percent of the total votes cast within the city or county for Governor at the last gubernatorial election and shall be

submitted to the clerk of the legislative body within 90 days of the adoption of an ordinance subject to referendum under this article.

(c) With respect to any ordinance that is subject to referendum pursuant to Sections 33365 and 33450 and either provides for tax-increment financing pursuant to Section 33670 or expands a project area that is subject to tax-increment financing, the referendum measure shall include, in the ballot pamphlet, an analysis by the county auditor-controller and, at the option of the legislative body, a separate analysis by the agency, of the redevelopment plan or amendment that will include both of the following:

(1) An estimate of the potential impact on property taxes per each ten thousand dollars ($10,000) of assessed valuation for taxpayers located in the city or county, as the case may be, outside the redevelopment project area during the life of the redevelopment project.

(2) An estimate of what would happen to the project area in the absence of the redevelopment project or in the absence of the proposed amendment to the plan.

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 150

An act to add Title 10 (commencing with Section 2500) to Part 4 of Division 3 of the Civil Code, relating to contracts.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. The Legislature finds and declares:

(a) The recording industry is an important industry to the State of California.

(b) Artistic labor is an important resource to the people of California that is vital to maintaining a healthy and vibrant recording industry.

(c) Every royalty artist should have the ability to conduct an audit to verify earnings reported under a recording contract.

(d) The establishment of a set of basic auditing practices will advance the interests of both the artists and the recording industry as a whole.

(e) This act is important public policy and establishes minimum audit procedures that apply to all royalty contracts in the recording industry.

SEC. 2. Title 10 (commencing with Section 2500) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 10. RECORDING ARTIST CONTRACTS

2500. As used in this title:

(a) ''Royalty recipient'' means a party to a contract for the furnishing of services in the production of sound recordings, as defined in Section 101 of Title 17 of the United States Code, who has the right to receive royalties under that contract.

(b) A ''royalty reporting party'' is the party obligated to pay royalties to the royalty recipient under the contract described in subdivision (a).

2501. Notwithstanding any provision of a contract described in Section 2500:

(a) A royalty recipient may audit the books and records of the royalty reporting party to determine if the royalty recipient earned all of the royalties due the royalty recipient pursuant to the contract, subject to the following:

(1) A royalty recipient may conduct an audit not more than once per year.

(2) A royalty recipient shall request an audit within three years after the end of a royalty earnings period under the contract.

(3) A royalty recipient may not audit a particular royalty earnings period more than once.

(b) The royalty recipient shall retain a qualified royalty auditor of the royalty recipient's choice to conduct an audit described in this section.

(c) The royalty recipient may enter into a contingency fee agreement with the auditor described in subdivision (b).

(d) A qualified royalty auditor may conduct individual audits of the books and records of a royalty reporting party on behalf of different royalty recipients simultaneously.

(e) Except as required by law, a qualified royalty auditor shall not disclose any confidential information obtained solely during an audit without the express consent of the party or parties to whom that information is confidential. This subdivision shall not prohibit the auditor from disclosing to the royalty recipient, or an agent of the recipient, on behalf of whom the auditor is conducting the audit information directly pertaining to that royalty recipient's contract, as described in Section 2500.

(f) The provisions of subdivisions (a), (b), (c), (d), and (e) are in addition to any other rights provided by a contract, as described in Section 2500, between a royalty recipient and a royalty reporting party.

(g) Nothing in subdivision (a), (b), (c), (d), or (e) shall be deemed to extend any limitations period applicable to royalty accounting or payments not specifically addressed in this section.

(h) Nothing in subdivision (a), (b), (c), (d), or (e) shall be deemed to limit any rights provided by collective bargaining agreement or by applicable state or federal law.

CHAPTER 151

An act to amend Section 1393.5 of the Labor Code, relating to employment.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 1393.5 of the Labor Code is amended to read:

1393.5. (a) Notwithstanding any other provision of this article or Article 2 (commencing with Section 49110) of Chapter 7 of Part 27 of the Education Code, an exemption issued pursuant to Section 1393 may authorize the employment of a minor, who is enrolled in any public or private school in the County of Lake, for more than 48 hours but not more than 60 hours in any one week, only upon prior written approval by the Lake County Board of Education.

(b) Each year, the Labor Commissioner, prior to issuing or renewing an exemption under this section, shall inspect the affected agricultural packing plant.

(c) As a condition of receiving an exemption or a renewal of an exemption under this section, an affected employer shall, on or before March 1 of each year, file a written report to the Labor Commissioner that contains the following employment information regarding the employer's prior year's payroll:

(1) The number of minors employed by that employer.

(2) A list of the age and hours worked on a weekly basis of each minor employed.

(d) The Labor Commissioner shall submit a written report to the Legislature, on or before March 1 of each year, that describes the general working conditions of minors employed in the agricultural packing

industry during the past year, and that includes all of the following information:

(1) The number of minors employed in the agricultural packing industry.

(2) The number of exemptions issued, renewed, or denied pursuant to this section.

(3) A summary of the inspections conducted by the Labor Commissioner pursuant to this section.

(4) The number of workplace injuries that occurred to minors at agricultural packing plants.

(5) The number of violations of labor laws and regulations that occurred at agricultural packing plants.

(e) This section shall remain in effect only until January 1, 2008, and as of that date is repealed.

CHAPTER 152

An act to amend Sections 31492 and 31492.1 of, and to add Section 31760.5 to, the Government Code, relating to county employees' retirement.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 31492 of the Government Code is amended to read:

31492. (a) (1) Upon the death of a retired member, 50 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (c) or (d), shall be continued during and throughout the life of his or her surviving spouse, if she or he was married to the member at least one year prior to the date of retirement. If there is no surviving spouse entitled to this allowance, or if he or she dies before every child of the deceased retired member, including every stepchild or adopted child, attains the age of 18 years, then the allowance that the spouse would have received had she or he survived shall be paid to the deceased retired member's child or children under the age of 18 years. If the survivor allowance is to be paid to surviving children, it shall be divided among the children in equal shares. However, the right of any child to share in the allowance shall cease upon his or her death, marriage, or attaining the age of 18 years.

(2) Notwithstanding any other provisions of this subdivision, the allowance otherwise payable to the children of the retired member shall be paid to the children through the age of 21 years, if the children remain unmarried and are regularly enrolled as full-time students in any accredited school as determined by the board.

(b) If, upon the death of a retired member, there is no surviving spouse or child entitled to the allowance under this section, and the total retirement allowance income received by the member during his or her lifetime did not equal or exceed his or her accumulated normal contributions, if any, the member's designated beneficiary shall be paid an amount equal to the excess of his or her accumulated normal contributions over his or her total retirement allowance income.

(c) (1) A vested member, or vested former member, in lieu of the retirement allowance and survivor allowance, if any, otherwise payable to a retired member and his or her surviving spouse pursuant to this article, may elect to have the actuarial equivalent of these benefits, as of the date of retirement, applied to a lesser amount payable throughout the retired member's life and to an increased survivor allowance as approved by the board, upon the advice of the actuary, continued throughout the life of and paid to his or her surviving spouse, if he or she was married to the member at least one year prior to the date of retirement. If there is no surviving spouse entitled to this allowance, or if he or she dies before every child of the deceased retired member, including every stepchild and adopted child, attains the age of 18 years, then the increased survivor allowance that the spouse would have received had he or she survived shall be paid to the deceased retired member's child or children under the age of 18 years. If the increased survivor allowance is to be paid to surviving children, it shall be divided among the children in equal shares. However, the right of any child to share in the allowance shall cease upon his or her death, marriage, or attaining the age of 18 years.

(2) Notwithstanding any other provision of this subdivision, the increased allowance otherwise payable to the children of the retired member shall be paid to the children through the age of 21 years if the children remain unmarried and are regularly enrolled as full-time students in any accredited school as determined by the board.

(3) The election pursuant to this subdivision may not, in the opinion of the board and the actuary, place any additional burden upon the retirement system. If a member makes the election, the member's normal or early retirement benefit shall be reduced by the additional actuarial cost to the system resulting from the increased survivor allowance. The actuarial cost of the survivor allowance payable under this subdivision shall be calculated taking into account the life expectancy of the member's surviving spouse.

(4) This subdivision is not operative unless the county board of supervisors, by resolution adopted by a majority vote, makes this subdivision operative in the county. This subdivision applies only to members who retire after the operative date of this subdivision.

(d) A vested member, or vested former member, in lieu of the normal or early retirement pension for the retired member's life alone and the survivor allowance, if any, that would be payable under subdivision (a) or (c), may elect to have the actuarial equivalent of the retired member's pension as of the date of retirement applied to a lesser amount payable throughout the retired member's life, and to a survivor allowance as approved by the board, upon the advice of the actuary, that, upon the death of the retired member, shall continue throughout the life of and be paid to the person or persons having an insurable interest in the life of the retired member, as the member or former member nominates by written designation duly executed and filed with the board at the time of retirement. The member's normal or early retirement benefit shall be reduced by the actuarial cost of the survivor allowance elected.

SEC. 2. Section 31492.1 of the Government Code is amended to read:

31492.1. (a) Notwithstanding Section 31492, each monthly survivor allowance paid pursuant to subdivision (a) of Section 31492 on account of a member who retires on or after the operative date of this section shall be equal to 55 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (b) or (c) of that section.

(b) This section is only applicable to Los Angeles County and is not operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 3. Section 31760.5 is added to the Government Code, to read:

31760.5. (a) Notwithstanding Section 31760 and in lieu of the retirement allowance and the continuing or survivor allowance, if any, otherwise payable to a retired member and his or her surviving spouse pursuant to this article, a member may elect in writing to have the actuarial equivalent of these benefits, as of the date of retirement, applied to a lesser amount payable throughout the retired member's life, and to an increased survivor allowance as approved by the board, upon the advice of the actuary, that, upon the death of the retired member, shall be continued throughout the life of and paid to his or her surviving spouse. To qualify for benefits under this section, the surviving spouse must be married to the member at least one year prior to the date of retirement. If there is no surviving spouse entitled to this allowance, or if the surviving spouse dies before every child of the deceased retired member, including every stepchild and adopted child, attains the age of

18 years, then the increased survivor allowance that the spouse would have received had he or she survived shall be paid to the deceased retired member's child or children under the age of 18 years. If the increased survivor allowance is to be paid to surviving children, it shall be divided among the children in equal shares. However, the right of any child to share in the allowance shall cease upon his or her death, marriage, or attaining the age of 18 years.

(b) Notwithstanding any other provisions of this section, the allowance otherwise payable to the children of the deceased retired member shall be paid through the age of 21 years if the children remain unmarried and are regularly enrolled as full-time students in any accredited school as determined by the board.

(c) The election under this section may not, in the opinion of the board and the actuary, place any additional burden upon the retirement system. If a member elects to be subject to this section, the retirement allowance that would otherwise be payable to the member shall be reduced by the additional cost to the system resulting from the increased survivor allowance. The actuarial cost of the survivor allowance payable under this section shall be calculated taking into account the life expectancy of the member's surviving spouse.

(d) This section is only applicable to Los Angeles County and is not operative unless and until the board of supervisors of the county elects, by resolution adopted by a majority vote, to make this section operative in the county. This section applies only to those members who retire after the operative date of this section.

CHAPTER 153

An act to amend Sections 4562.9 and 4663 of, and to repeal Sections 4205 and 4563.5 of, the Public Resources Code, relating to natural resources.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 4205 of the Public Resources Code is repealed.

SEC. 2. Section 4562.9 of the Public Resources Code is amended to read:

4562.9. The board shall adopt regulations requiring maintenance of installed drainage facilities and soil stabilization treatments on skid

trails, roads, and landings for a period of at least one year, but not to exceed three years, after filing of the work completion report, if the report is approved.

SEC. 3. Section 4563.5 of the Public Resources Code is repealed.

SEC. 4. Section 4663 of the Public Resources Code is amended to read:

4663. The department, in coordination with the advisory committee, shall adopt a general plan for the state forest which reflects the long-range development and management plans to provide for the optimum use and enjoyment of the living forest, as provided in Section 4660, as well as the protection of its quality and the watershed within the Santa Cruz area. The advisory committee shall approve the general plan prior to adoption by the department.

CHAPTER 154

An act to amend Section 13010.5 of the Penal Code, relating to criminal history reporting.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 13010.5 of the Penal Code is amended to read:

13010.5. The department shall collect data pertaining to the juvenile justice system for criminal history and statistical purposes. This information shall serve to assist the department in complying with the reporting requirement of subdivisions (c) and (d) of Section 13012, measuring the extent of juvenile delinquency, determining the need for and effectiveness of relevant legislation, and identifying long-term trends in juvenile delinquency. Any data collected pursuant to this section may include criminal history information which may be used by the department to comply with the requirements of Section 602.5 of the Welfare and Institutions Code.

CHAPTER 155

An act to amend Section 127 of the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to the Metropolitan Water District of Southern California.

[Approved by Governor July 15, 2004. Filed with
Secretary of State July 16, 2004.]

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

SECTION 1. Section 127 of the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969) is amended to read:

Sec. 127. (a) Commencing on or before February 1, 2000, and each February 1 thereafter, the Metropolitan Water District of Southern California shall submit to the Legislature a report that includes a description of the complaints and other communications submitted to the district from member public agencies that allege unethical, unauthorized, or illegal activities by the district against any member public agency or the public, in the previous calendar year.

(b) The Metropolitan Water District of Southern California shall include in the report a description of the actions taken by the district in response to the complaints and litigation.

(c) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 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 156

An act to amend Sections 11047 and 11102 of the Elections Code, relating to elections.

[Approved by Governor July 15, 2004. Filed with
Secretary of State July 16, 2004.]

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

SECTION 1. Section 11047 of the Elections Code is amended to read:

11047. When a petition is circulated in more than one county for the recall of an officer, each section of the petition shall bear the name of the county for which it is circulated, and only registered voters of that county may sign that section.

SEC. 2. Section 11102 of the Elections Code is amended to read:

11102. Each section of a recall petition shall be filed with the elections official of the county for which it was circulated.

CHAPTER 157

An act to add Section 25218.13 to the Health and Safety Code, and to add Sections 40190.5, 41502, and 41512 to the Public Resources Code, relating to solid waste.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

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

(a) Every year more than 2 billion needles and syringes are used outside of healthcare settings.

(b) Most of these needles are improperly stored and then are placed into either municipal trash or recycling containers, thereby posing serious health risks to children, workers, and the general public.

(c) Although California has enacted the nation's most comprehensive hazardous and medical waste statutes, those statutes do not provide an adequate framework for programs to safely collect and destroy the millions of needles generated each year by California households.

(d) Accordingly, it is the intent of the Legislature in enacting this act to authorize local agencies to expand the scope of their existing household hazardous waste plans to provide for the safe management of sharps waste.

(e) This act shall be known and may be cited as the Safe Needle Disposal Act of 2004.

SEC. 2. Section 25218.13 is added to the Health and Safety Code, to read:

25218.13. (a) A household hazardous waste collection facility that has a permit issued under Section 25218.8 may operate as a ''home-generated sharps consolidation point,'' as defined in subdivision (b) of Section 117904, if the facility is approved by the enforcement agency as a point of consolidation pursuant to Section 117904 and the facility complies with the provisions of that section.

(b) For the purposes of this section, ''sharps waste'' has the meaning defined in Section 40190.5 of the Public Resources Code.

SEC. 3. Section 40190.5 is added to the Public Resources Code, to read:

40190.5. ''Sharps waste'' means waste generated by a household that includes a hypodermic needle, syringe, or lancet.

SEC. 4. Section 41502 is added to the Public Resources Code, to read:

41502. A city household hazardous waste element may include a program for the safe collection, treatment, and disposal of sharps waste generated by households. The program may include any of the following:

(a) The designation of authorized collection locations, including, but not limited to, household hazardous waste collection facilities, designated hospitals and clinics, and fire stations.

(b) Efforts to inform and encourage the public to return sharps waste to designated collection locations.

(c) Efforts to inform and encourage the public to subscribe to mail-back programs authorized by the United States Postal Service.

(d) An estimate of the expenditures required for the safe collection, treatment, and disposal of sharps waste, and consideration of the feasibility of offering low-cost mail-back programs for senior and low-income households.

SEC. 5. Section 41512 is added to the Public Resources Code, to read:

41512. A county household hazardous waste element may include a program for the safe collection, treatment, and disposal of sharps waste generated by households. The program may include any of the following:

(a) The designation of authorized collection locations, including, but not limited to, household hazardous waste collection facilities, designated hospitals and clinics, and fire stations.

(b) Efforts to inform and encourage the public to return sharps waste to designated collection locations.

(c) Efforts to inform and encourage the public to subscribe to mail-back programs authorized by the United States Postal Service.

(d) An estimate of the expenditures required for the safe collection, treatment, and disposal of sharps waste, and consideration of the feasibility of offering low-cost mail-back programs for senior and low-income households.

CHAPTER 158

An act to amend Section 33344.5 of, and to add Section 33344.6 to, the Health and Safety Code, relating to redevelopment.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 33344.5 of the Health and Safety Code is amended to read:

33344.5. After receiving the report prepared pursuant to Section 33328, or after the time period for preparation of that report has passed, a redevelopment agency that includes a provision for the division of taxes pursuant to Section 33670 in the redevelopment plan shall prepare and send to each affected taxing entity, as defined in Section 33353.2, no later than the date specified in Section 33344.6, a preliminary report which shall contain all of the following:

(a) The reasons for the selection of the project area.

(b) A description of the physical and economic conditions existing in the project area.

(c) A description of the project area which is sufficiently detailed for a determination as to whether the project area is predominantly urbanized. The description shall include at least the following information, which shall be based upon the terms described and defined in Section 33320.1:

(1) The total number of acres within the project area.

(2) The total number of acres that is characterized by the condition described in paragraph (4) of subdivision (a) of Section 33031.

(3) The total number of acres that are in agricultural use. ''Agricultural use'' shall have the same meaning as that term is defined in subdivision (b) of Section 51201 of the Government Code.

(4) The total number of acres that is an integral part of an area developed for urban uses.

(5) The percent of property within the project area that is predominantly urbanized.

(6) A map of the project area that identifies the property described in paragraphs (2), (3), and (4), and the property not developed for an urban use.

(d) A preliminary assessment of the proposed method of financing the redevelopment of the project area, including an assessment of the economic feasibility of the project and the reasons for including a provision for the division of taxes pursuant to Section 33670 in the redevelopment plan.

(e) A description of the specific project or projects then proposed by the agency.

(f) A description of how the project or projects to be pursued by the agency in the project area will improve or alleviate the conditions described in subdivision (b).

(g) If the project area contains lands that are in agricultural use, the preliminary report shall be sent to the Department of Conservation, the county agricultural commissioner, the county farm bureau, the California Farm Bureau Federation, and agricultural entities and general farm organizations that provide a written request for notice. A separate written request for notice shall be required for each proposed redevelopment plan or amendment that adds territory. A written request for notice applicable to one redevelopment plan or amendment shall not be effective for a subsequent plan or amendment.

SEC. 2. Section 33344.6 is added to the Health and Safety Code, to read:

33344.6. A redevelopment agency that is required to prepare a preliminary report pursuant to Section 33344.5 shall send the preliminary report no later than 90 days before the date set for a public hearing held pursuant to Section 33355 or 33360. However, notwithstanding this requirement, the redevelopment agency may send the report no later than 21 days before the hearing held pursuant to Section 33355 or 33360 if any one of the following conditions is met:

(a) The redevelopment plan is proposed to be adopted pursuant to Chapter 4.5 (commencing with Section 33492).

(b) The redevelopment plan is proposed to be adopted pursuant to the Community Redevelopment Disaster Project Law (Part 1.5 (commencing with Section 34000)).

(c) The redevelopment plan is proposed to be amended and the amendment will not do any of the following:

(1) Add new territory to the project area.

(2) Increase the limitation on the number of dollars of property taxes that may be divided and allocated to the agency pursuant to Section 33670.

(3) Increase the limitation on the amount of the bonded indebtedness that can be outstanding at one time.

(4) Increase the time limit on the establishing of loans, advances, and indebtedness to be paid with the proceeds of property taxes received pursuant to Section 33670.

(5) Increase the time limit on the receipt of property taxes by the agency pursuant to Section 33670.

(6) Merge project areas.

(d) The agency has previously provided affected taxing agencies with the preliminary report and proposes to change the base year assessment roll pursuant to Section 33328.5.

(e) The affected taxing entities waive, in writing, the 90-day notice requirement.

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 159

An act to add Section 679.05 to the Penal Code, relating to domestic violence.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 679.05 is added to the Penal Code, to read:

679.05. (a) A victim of domestic violence or abuse, as defined in Sections 6203 or 6211 of the Family Code, or Section 13700 of the Penal Code, has the right to have a domestic violence counselor and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview. As used in this section, ''domestic violence counselor'' is defined in Section 1037.1 of the Evidence Code.

(b) (1) Prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a domestic violence incident, a victim of domestic violence or abuse, as defined in Sections 6203 or 6211 of the Family Code, or Section 13700 of this code, shall be notified orally or in writing by the attending law enforcement authority or district attorney that the victim has the right to have a domestic violence counselor and

a support person of the victim's choosing present at the interview or contact. This subdivision applies to investigators and agents employed or retained by law enforcement or the district attorney.

(2) At the time the victim is advised of his or her rights pursuant to paragraph (1), the attending law enforcement authority or district attorney shall also advise the victim of the right to have a domestic violence counselor and a support person present at any interview by the defense attorney or investigators or agents employed by the defense attorney.

(c) An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section.

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 160

An act to add Section 758.7 to the Insurance Code, relating to insurance fees.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 758.7 is added to the Insurance Code, to read:

758.7. An insurer, upon receiving notice from an insured, shall reimburse any fees and extra premium charged to an insured due to a late premium payment or a lapse in coverage under the policy if the late payment or lapse in coverage was the result of fraud committed by an agent or broker licensed pursuant to this code and one of the following has occurred:

(a) The agent or broker has been convicted of fraudulent activity in court.

(b) An administrative penalty has been imposed on the agent or broker for fraudulent activity.

(c) The agent or broker has been charged with fraud in court or in an administrative action and has agreed to plead guilty to a lesser charge for the fraudulent activity of which he or she is accused.

CHAPTER 161

An act to amend Sections 56000, 56032, 56040, 56043, 56170, 56195.7, 56301, 56320, 56321, 56341.5, 56344, 56345, 56345.1, 56346, 56365, 56381, 56500.3, 56500.4, 56502, 56504.5, 56505, 56505.1, 56506, and 56863 of, to add Section 56500.6 to, and to add Chapter 5.1 (commencing with Section 56515) to Part 30 of, the Education Code, relating to special education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 56000 of the Education Code is amended to read:

56000. The Legislature finds and declares all individuals with exceptional needs have a right to participate in free appropriate public education and special educational instruction and services for these persons are needed in order to ensure the right to an appropriate educational opportunity to meet their unique needs.

It is the intent of the Legislature to unify and improve special education programs in California under the flexible program design of the Master Plan for Special Education. It is the further intent of the Legislature to ensure that all individuals with exceptional needs are provided their rights to appropriate programs and services which are designed to meet their unique needs under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

It is the further intent of the Legislature that this part does not abrogate any right provided to individuals with exceptional needs and their parents or guardians under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.). It is also the intent of the Legislature that this part does not set a higher standard of educating individuals with exceptional needs than that established by Congress under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

It is the further intent of the Legislature that the Master Plan for Special Education provide an educational opportunity for individuals

with exceptional needs that is equal to or better than that provided prior to the implementation of programs under this part, including, but not limited to, those provided to individuals previously served in a development center for handicapped pupils.

It is the intent of the Legislature that the restructuring of special education programs as set forth in the Master Plan for Special Education be implemented in accordance with this part by all school districts and county offices.

SEC. 2. Section 56032 of the Education Code is amended to read:

56032. ''Individualized education program'' means a written document described in Sections 56345 and 56345.1 for an individual with exceptional needs that is developed, reviewed, and revised in a meeting in accordance with Sections 300.340 to 300.350, inclusive, of Title 34 of the Code of Federal Regulations and this part. It also means ''individualized family service plan'' as described in Section 1436 of Title 20 of the United States Code if the individualized education program pertains to an individual with exceptional needs younger than three years of age.

SEC. 3. Section 56040 of the Education Code is amended to read:

56040. (a) Every individual with exceptional needs, who is eligible to receive educational instruction, related services, or both under this part shall receive educational instruction, services, or both, at no cost to his or her parents or, as appropriate, to him or her. A free appropriate public education shall be available to individuals with exceptional needs in accordance with paragraph (1) of subsection (a) of Section 1412 of Title 20 of the United States Code and Section 300.121 of Title 34 of the Code of Federal Regulations.

(b) An individual, aged 18 through 21, who, in the educational placement prior to his or her incarceration in an adult correctional facility was not identified as being an individual with exceptional needs or did not have an individualized education program under this part, is not entitled to a free appropriate public education pursuant to clause (ii) of subparagraph (B) of paragraph (1) of subsection (a) of Section 1412 of Title 20 of the United States Code.

SEC. 4. Section 56043 of the Education Code is amended to read:

56043. The primary timelines affecting special education programs are as follows:

(a) A proposed assessment plan shall be developed within 15 calendar days of referral for assessment, not counting calendar days between the pupil's regular school sessions or terms or calendar days of school vacation in excess of five schooldays from the date of receipt of the referral, unless the parent or guardian agrees, in writing, to an extension, pursuant to subdivision (a) of Section 56321.

(b) A parent or guardian shall have at least 15 calendar days from the receipt of the proposed assessment plan to arrive at a decision, pursuant to subdivision (c) of Section 56321.

(c) A parent or guardian shall be notified of the individualized education program meeting early enough to ensure an opportunity to attend, pursuant to subdivision (b) of Section 56341.5.

(d) (1) An individualized education program required as a result of an assessment of a pupil shall be developed within a total time not to exceed 50 calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's or guardian's written consent for assessment, unless the parent or guardian agrees, in writing, to an extension, pursuant to Section 56344.

(2) A meeting to develop an initial individualized education program for the pupil shall be conducted within 30 days of a determination that the child needs special education and related services pursuant to paragraph (2) of subsection (b) of Section 300.343 of Title 34 of the Code of Federal Regulations and in accordance with Section 56344.

(e) Beginning at age 14, or younger, if determined by the individualized education program team pursuant to paragraph (1) of subsection (b) of Section 300.347 of Title 34 of the Code of Federal Regulations, a statement of the transition service needs of the pupil shall be included in the pupil's individualized education program, pursuant to subdivision (a) of Section 56345.1, and shall be updated annually.

(f) Beginning at age 16 or younger, and annually thereafter, a statement of needed transition services shall be included in the pupil's individualized education program, pursuant to subdivision (b) of Section 56345.1.

(g) A pupil's individualized education program shall be implemented as soon as possible following the individualized education program meeting, pursuant to Section 3040 of Title 5 of the California Code of Regulations.

(h) An individualized education program team shall meet at least annually to review a pupil's progress, the individualized education program, including whether the annual goals for the pupil are being achieved, the appropriateness of the placement, and to make any necessary revisions, pursuant to subdivision (d) of Section 56343, subdivision (a) of Section 56380, and Section 3068 of Title 5 of the California Code of Regulations.

(i) A reassessment of a pupil shall be conducted at least once every three years or more frequently, if conditions warrant a reassessment and a new individualized education program to be developed, pursuant to Section 56381.

(j) A meeting of an individualized education program team requested by a parent or guardian to review an individualized education program pursuant to subdivision (c) of Section 56343 shall be held within 30 calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's or guardian's written request, pursuant to Section 56343.5.

(k) The administrator of a local program under this part shall ensure that the pupil is immediately provided an interim placement for a period not to exceed 30 calendar days whenever a pupil transfers into a school district from a school district not operating programs under the same local plan in which he or she was last enrolled in a special education program pursuant to Section 56325.

(*l*) The parent or guardian shall have the right and opportunity to examine all school records of the child and to receive copies within five calendar days after a request is made by the parent or guardian, either orally or in writing, pursuant to Section 56504 and Chapter 6.5 (commencing with Section 49060) of Part 27.

(m) Upon receipt of a request from an educational agency where an individual with exceptional needs has enrolled, a former educational agency shall send the pupil's special education records, or a copy thereof, within five working days, pursuant to subdivision (a) of Section 3024 of Title 5 of the California Code of Regulations.

(n) The department shall do all of the following:

(1) Have a time limit of 60 calendar days after a complaint is filed with the state education agency to investigate the complaint.

(2) Give the complainant the opportunity to submit additional information about the allegations in the complaint.

(3) Review all relevant information and make an independent determination as to whether there is a violation of a requirement of this part or Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(4) Issue a written decision, pursuant to Section 300.661 of Title 34 of the Code of Federal Regulations.

(o) A prehearing mediation conference shall be scheduled within 15 calendar days of receipt by the superintendent of the request for mediation, and shall be completed within 30 calendar days after the request for mediation, unless both parties to the prehearing mediation conference agree to extend the time for completing the mediation, pursuant to Section 56500.3.

(p) Any request for a due process hearing arising from subdivision (a) of Section 56501 shall be filed within three years from the date the party initiating the request knew or had reason to know of facts underlying the basis for the request, pursuant to subdivision (j) of Section 56505.

(q) The superintendent shall ensure that, within 45 calendar days after receipt of a written due process hearing request, the hearing is immediately commenced and completed, including any mediation requested at any point during the hearing process, and a final administrative decision is rendered, pursuant to subdivision (a) of Section 56502.

(r) If either party to a due process hearing intends to be represented by an attorney in the due process hearing, notice of that intent shall be given to the other party at least 10 calendar days prior to the hearing, pursuant to subdivision (a) of Section 56507.

(s) Any party to a due process hearing shall have the right to be informed by the other parties to the hearing, at least 10 calendar days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues, pursuant to paragraph (6) of subdivision (e) of Section 56505.

(t) Any party to a due process hearing shall have the right to receive from other parties to the hearing, at least five business days prior to the hearing, a copy of all documents, including all assessments completed and not completed by that date, and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, pursuant to paragraph (7) of subdivision (e) of Section 56505.

(u) An appeal of a due process hearing decision shall be made within 90 calendar days of receipt of the hearing decision, pursuant to subdivision (i) of Section 56505.

(v) When an individualized education program calls for a residential placement as a result of a review by an expanded individualized education program team, the individualized education program shall include a provision for a review, at least every six months, by the full individualized education program team of all of the following pursuant to paragraph (2) of subdivision (c) of Section 7572.5 of the Government Code:

(1) The case progress.

(2) The continuing need for out-of-home placement.

(3) The extent of compliance with the individualized education program.

(4) Progress toward alleviating the need for out-of-home care.

(w) No later than the pupil's 17th birthday, a statement shall be included in the pupil's individualized education program that the pupil has been informed of his or her rights that will transfer to the pupil upon reaching 18 years of age pursuant to Section 300.517 of Title 34 of the Code of Federal Regulations, Section 56041.5, and paragraph (8) of subdivision (a) of Section 56345.

SEC. 5. Section 56170 of the Education Code is amended to read:

56170. As used in this part, ''private school children with disabilities'' means children with disabilities enrolled by a parent in private schools or facilities, in accordance with Section 300.450 of Title 34 of the Code of Federal Regulations, other than individuals with exceptional needs placed by a district, special education local plan area, or county office in a nonpublic, nonsectarian school pursuant to Section 56365.

SEC. 6. Section 56195.7 of the Education Code is amended to read:

56195.7. In addition to the provisions required to be included in the local plan pursuant to Chapter 3 (commencing with Section 56205), each special education local plan area that submits a local plan pursuant to subdivision (b) of Section 56195.1 and each county office that submits a local plan pursuant to subdivision (c) of Section 56195.1 shall develop written agreements to be entered into by entities participating in the plan. The agreements need not be submitted to the superintendent. These agreements shall include, but not be limited to, the following:

(a) A coordinated identification, referral, and placement system pursuant to Chapter 4 (commencing with Section 56300).

(b) Procedural safeguards pursuant to Chapter 5 (commencing with Section 56500).

(c) Regionalized services to local programs, including, but not limited to, all of the following:

(1) Program specialist service pursuant to Section 56368.

(2) Personnel development, including training for staff, parents, and members of the community advisory committee pursuant to Article 3 (commencing with Section 56240).

(3) Evaluation pursuant to Chapter 6 (commencing with Section 56600).

(4) Data collection and development of management information systems.

(5) Curriculum development.

(6) Provision for ongoing review of programs conducted, and procedures utilized, under the local plan, and a mechanism for correcting any identified problem.

(d) A description of the process for coordinating services with other local public agencies that are funded to serve individuals with exceptional needs.

(e) A description of the process for coordinating and providing services to individuals with exceptional needs placed in public hospitals, proprietary hospitals, and other residential medical facilities pursuant to Article 5.5 (commencing with Section 56167) of Chapter 2.

(f) A description of the process for coordinating and providing services to individuals with exceptional needs placed in licensed

children's institutions and foster family homes pursuant to Article 5 (commencing with Section 56155) of Chapter 2.

(g) A description of the process for coordinating and providing services to individuals with exceptional needs placed in juvenile court schools or county community schools pursuant to Section 56150.

(h) A budget for special education and related services that shall be maintained by the special education local plan area and be open to the public covering the entities providing programs or services within the special education local plan area. The budget language shall be presented in a form that is understandable by the general public. For each local educational agency or other entity providing a program or service, the budget, at minimum, shall display the following:

(1) Expenditures by object code and classification for the previous fiscal year and the budget by the same object code classification for the current fiscal year.

(2) The number and type of certificated instructional and support personnel, including the type of class setting to which they are assigned, if appropriate.

(3) The number of instructional aides and other qualified classified personnel.

(4) The number of enrolled individuals with exceptional needs receiving each type of service provided.

(i) For multidistrict special education local plan areas, a description of the policymaking process that shall include a description of the local method used to distribute state and federal funds among the local educational agencies in the special education local plan area. The local method to distribute funds shall be approved according to the policymaking process established consistent with subdivision (f) of Section 56001 and pursuant to paragraph (3) of subdivision (b) of Section 56205 or subdivision (c) of Section 56200, whichever is appropriate.

(j) (1) In accordance with Section 1413 of Title 20 of the United States Code, each single-district special education local plan area established pursuant to Section 56195.1 shall have a written procedure for the ongoing review of programs conducted, and procedures utilized pursuant to Section 56205, under the local plan as defined pursuant to Section 56027 and administered pursuant to Section 56195, and a mechanism for correcting any identified problem pursuant to paragraph (6) of subdivision (c).

(2) Multidistrict special education local plan areas established pursuant to subdivision (b) of Section 56195.1 and a district or districts joined with the county office in accordance with subdivision (c) of Section 56195.1 shall have a written agreement entered into by entities participating in the local plan that includes a provision for ongoing

review of programs conducted, and procedures utilized, under the local plan, and a mechanism for correcting any identified problem pursuant to paragraph (6) of subdivision (c).

(3) The written procedure referenced in paragraph (1) and the written agreement referenced in paragraph (2) need not be submitted to the superintendent but shall be available upon request by the department.

SEC. 7. Section 56301 of the Education Code is amended to read:

56301. (a) All individuals with disabilities residing in the state, including pupils with disabilities who are enrolled in elementary and secondary schools and private schools, including parochial schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and assessed as required by paragraph (3) and clause (ii) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(b) In accordance with Section 300.125 of Title 34 of the Code of Federal Regulations, the requirements of this section also apply to highly mobile individuals with exceptional needs, such as migrant and homeless children, and children who are suspected of being an individual with exceptional needs pursuant to Section 56026 and in need of special education, even though they are advancing from grade to grade.

(c) Each special education local plan area shall establish written policies and procedures pursuant to Section 56205 for use by its constituent local agencies for a continuous child-find system that addresses the relationships among identification, screening, referral, assessment, planning, implementation, review, and the triennial assessment. The policies and procedures shall include, but need not be limited to, written notification of all parents of their rights under this chapter, and the procedure for initiating a referral for assessment to identify individuals with exceptional needs. Parents shall be given a copy of their rights and procedural safeguards upon initial referral for assessment, upon notice of an individualized education program meeting or reassessment, upon filing a complaint, and upon filing for a prehearing mediation conference pursuant to Section 56500.3 or a due process hearing request pursuant to Section 56502.

(d) Child find data collected pursuant to this chapter, or collected pursuant to a regulation or an interagency agreement, are subject to the confidentiality requirements of Section 300.125 and Sections 300.560 to 300.577, inclusive, of Title 34 of the Code of Federal Regulations.

SEC. 8. Section 56320 of the Education Code is amended to read:

56320. Before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil's educational needs

shall be conducted, by qualified persons, in accordance with requirements including, but not limited to, all the following:

(a) Testing and assessment materials and procedures used for the purposes of assessment and placement of individuals with exceptional needs are selected and administered so as not to be racially, culturally, or sexually discriminatory.

(b) Tests and other assessment materials meet all the following requirements:

(1) Are provided and administered in the pupil's native language, pursuant to Section 300.19 of Title 34 of the Code of Federal Regulations, or other mode of communication, unless the assessment plan indicates reasons why this provision and administration are not clearly feasible.

(2) Have been validated for the specific purpose for which they are used.

(3) Are administered by trained personnel in conformance with the instructions provided by the producer of the tests and other assessment materials, except that individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist.

(c) Tests and other assessment materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

(d) Tests are selected and administered to best ensure that when a test administered to a pupil with impaired sensory, manual, or speaking skills produces test results that accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure.

(e) Pursuant to subsection (f) of Section 300.532 of Title 34 of the Code of Federal Regulations, no single procedure is used as the sole criterion for determining whether a pupil is an individual with exceptional needs and for determining an appropriate educational program for the pupil.

(f) The pupil is assessed in all areas related to the suspected disability including, if appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. A developmental history is obtained, when appropriate. For pupils with residual vision, a low vision assessment shall be provided in accordance with guidelines established pursuant to Section 56136. In assessing each pupil under this article, the assessment

shall be conducted in accordance with subsections (h), (i), and (j) of Section 300.532 of Title 34 of the Code of Federal Regulations.

(g) The assessment of a pupil, including the assessment of a pupil with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. Special attention shall be given to the unique educational needs, including, but not limited to, skills and the need for specialized services, materials, and equipment consistent with guidelines established pursuant to Section 56136.

(h) As part of an initial assessment, if appropriate, and as part of any reassessment under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and this part, the group that includes members of the individualized education program team, and other qualified professionals, as appropriate, shall follow the procedures specified in subsection (a) of Section 300.533 of Title 34 of the Code of Federal Regulations. The group may conduct its review without a meeting.

SEC. 9. Section 56321 of the Education Code is amended to read:

56321. (a) If an assessment for the development or revision of the individualized education program is to be conducted, the parent or guardian of the pupil shall be given, in writing, a proposed assessment plan within 15 days of the referral for assessment not counting days between the pupil's regular school sessions or terms or days of school vacation in excess of five schooldays from the date of receipt of the referral, unless the parent or guardian agrees, in writing, to an extension. However, in any event, the assessment plan shall be developed within 10 days after the commencement of the subsequent regular school year or the pupil's regular school term as determined by each district's school calendar for each pupil for whom a referral has been made 10 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 15-day time shall recommence on the date that the pupil's regular schooldays reconvene. A copy of the notice of a parent's or guardian's rights shall be attached to the assessment plan. A written explanation of all the procedural safeguards under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following), and the rights and procedures contained in Chapter 5 (commencing with Section 56500), shall be included in the notice of a parent's or guardian's rights, including information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing; the timelines for completing each process; whether the process is optional; and the type of representative who may be invited to participate.

(b) The proposed assessment plan given to parents or guardians shall meet all the following requirements:

(1) Be in language easily understood by the general public.

(2) Be provided in the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless to do so is clearly not feasible.

(3) Explain the types of assessments to be conducted.

(4) State that no individualized education program will result from the assessment without the consent of the parent.

(c) An assessment may not be conducted, unless the written consent of the parent or guardian is obtained prior to the assessment except pursuant to subdivision (e) of Section 56506. The parent or guardian shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of the consent.

(d) Consent for initial assessment may not be construed as consent for initial placement or initial provision of special education and related services to an individual with exceptional needs, pursuant to paragraph (2) of subsection (a) of Section 300.505 of Title 34 of the Code of Federal Regulations.

(e) In accordance with paragraph (3) of subsection (a) of Section 300.505 of Title 34 of the Code of Federal Regulations, parental consent is not required before reviewing existing data as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children, unless before administration of that test or assessment, consent is required of the parents of all the children.

SEC. 10. Section 56341.5 of the Education Code, as amended by Chapter 62 of the Statutes of 2003, is amended to read:

56341.5. (a) Each district, special education local plan area, or county office convening a meeting of the individualized education program team shall take steps to ensure that no less than one of the parents or guardians of the individual with exceptional needs are present at each individualized education program meeting or are afforded the opportunity to participate.

(b) Parents or guardians shall be notified of the individualized education program meeting early enough to ensure an opportunity to attend.

(c) The individualized education program meeting shall be scheduled at a mutually agreed upon time and place. The notice of the meeting under subdivision (b) shall indicate the purpose, time, and location of the meeting and who shall be in attendance. Parents or guardians shall also be informed in the notice of the right, pursuant to clause (ii) of paragraph (1) of subsection (b) of Section 300.345 of Title 34 of the Code of Federal Regulations, to bring other people to the meeting who have knowledge or special expertise regarding the individual with exceptional needs.

(d) For an individual with exceptional needs beginning at age 14, or younger, if appropriate, the meeting notice shall also indicate that a

purpose of the meeting will be the development of a statement of the transition services needs of the individual required by subdivision (a) of Section 56345.1 and indicate that the individual with exceptional needs is also invited to attend. In accordance with paragraph (3) of subsection (b) of Section 300.345 of the Code of Federal Regulations, for an individual with exceptional needs beginning at 16 years of age or younger, if appropriate, the meeting notice shall also indicate that a purpose of the meeting is the consideration of needed transition services for the individual required by subdivision (b) of Section 56345.1 and indicate that the individual with exceptional needs is invited to attend. If the pupil does not attend the individualized education program meeting, the district, special education local plan area, or county office shall take steps to ensure that the pupil's preferences and interests are considered in accordance with paragraph (2) of subsection (b) of Section 300.344 of Title 34 of the Code of Federal Regulations.

(e) The meeting notice shall also identify any other local agency in accordance with paragraph (3) of subsection (b) of Section 300.344 of Title 34 of the Code of Federal Regulations.

(f) If no parent or guardian can attend the meeting, the district, special education local plan area, or county office shall use other methods to ensure parent or guardian participation, including individual or conference telephone calls.

(g) A meeting may be conducted without a parent or guardian in attendance if the district, special education local plan area, or county office is unable to convince the parent or guardian that he or she should attend. In this event, the district, special education local plan area, or county office shall maintain a record of its attempts to arrange a mutually agreed-upon time and place, as follows:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents or guardians and any responses received.

(3) Detailed records of visits made to the home or place of employment of the parent or guardian and the results of those visits.

(h) The district, special education local plan area, or county office shall take whatever action is necessary to ensure that the parent or guardian understands the proceedings at a meeting, including arranging for an interpreter for parents or guardians with deafness or whose native language is a language other than English.

(i) The district, special education local plan area, or county office shall give the parent or guardian a copy of the individualized education program, at no cost to the parent or guardian.

SEC. 11. Section 56344 of the Education Code is amended to read:

56344. (a) An individualized education program required as a result of an assessment of a pupil shall be developed within a total time not to exceed 50 days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's written consent for assessment, unless the parent agrees, in writing, to an extension. However, an individualized education program required as a result of an assessment of a pupil shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar for each pupil for whom a referral has been made 20 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 50-day time shall recommence on the date that pupil schooldays reconvene. A meeting to develop an initial individualized education program for the pupil shall be conducted within 30 days of a determination that the pupil needs special education and related services pursuant to paragraph (2) of subsection (b) of Section 300.343 of Title 34 of the Code of Federal Regulations.

(b) Each district, special education local plan area, or county office shall have an individualized education program in effect for each individual with exceptional needs within its jurisdiction at the beginning of each school year in accordance with subdivision (a) and pursuant to subsections (a) and (b) of Section 300.342 of Title 34 of the Code of Federal Regulations.

SEC. 12. Section 56345 of the Education Code is amended to read:

56345. (a) The individualized education program is a written statement determined in a meeting of the individualized education program team and shall include, but not be limited to, all of the following:

(1) The present levels of the pupil's educational performance, including the following:

(A) For a schoolage child, how the pupil's disability affects the pupil's involvement and progress in the general curriculum.

(B) For a preschoolage child, as appropriate, how the disability affects the child's participation in appropriate activities.

(2) The measurable annual goals, including benchmarks or short-term objectives related to the following:

(A) Meeting the pupil's needs that result from the pupil's disability to enable the pupil to be involved in and progress in the general curriculum.

(B) Meeting each of the pupil's other educational needs that result from the pupil's disability.

(3) The specific special educational instruction and related services and supplementary aids and services to be provided to the pupil, or on behalf of the pupil, and a statement of the program modifications or

supports for school personnel that will be provided for the pupil in order to do the following:

(A) To advance appropriately toward attaining the annual goals.

(B) To be involved and progress in the general curriculum in accordance with subparagraph (A) of paragraph (1) and to participate in extracurricular and other nonacademic activities.

(C) To be educated and participate with other pupils with disabilities and nondisabled pupils in the activities described in this section.

(4) An explanation of the extent, if any, to which the pupil will not participate with nondisabled pupils in regular classes and in the activities described in paragraph (3).

(5) The individual modifications in the administration of state or districtwide assessments of pupil achievement that are needed in order for the pupil to participate in the assessment. If the individualized education program team determines that the pupil will not participate in a particular state or districtwide assessment of pupil achievement (or part of an assessment), a statement of the following:

(A) Why that assessment is not appropriate for the pupil.

(B) How the pupil will be assessed.

(6) The projected date for the beginning of the services and modifications described in paragraph (3), and the anticipated frequency, location, and duration of those services and modifications included in the individualized education program.

(7) Appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved.

(8) Beginning at least one year before the pupil reaches the age of 18, a statement shall be included in the individualized education program that the pupil has been informed of his or her rights under this part, if any, that will transfer to the pupil upon reaching the age of 18 pursuant to Section 56041.5.

(9) A statement of how the pupil's progress toward the annual goals described in paragraph (2) will be measured.

(10) A statement of how the pupil's parents or guardians will be regularly informed, at least as often as parents or guardians are informed of their nondisabled pupil's progress in the following:

(A) The pupil's progress toward the annual goals described in paragraph (2).

(B) The extent to which that progress is sufficient to enable the pupil to achieve the goals by the end of the year.

(b) If appropriate, the individualized education program shall also include, but not be limited to, all of the following:

(1) For pupils in grades 7 to 12, inclusive, any alternative means and modes necessary for the pupil to complete the district's prescribed

course of study and to meet or exceed proficiency standards for graduation.

(2) For individuals whose native language is other than English, linguistically appropriate goals, objectives, programs and services.

(3) Extended school year services when needed, as determined by the individualized education program team.

(4) Provision for the transition into the regular class program if the pupil is to be transferred from a special class or nonpublic, nonsectarian school into a regular class in a public school for any part of the schoolday, including the following:

(A) A description of activities provided to integrate the pupil into the regular education program. The description shall indicate the nature of each activity, and the time spent on the activity each day or week.

(B) A description of the activities provided to support the transition of pupils from the special education program into the regular education program.

(5) For pupils with low-incidence disabilities, specialized services, materials, and equipment, consistent with guidelines established pursuant to Section 56136.

(c) It is the intent of the Legislature in requiring individualized education programs, that the local educational agency is responsible for providing the services delineated in the individualized education program. However, the Legislature recognizes that some pupils may not meet or exceed the growth projected in the annual goals and objectives of the pupil's individualized education program. Pursuant to paragraph (2) of subsection (a) of Section 300.350 of Title 34 of the Code of Federal Regulations, public education agencies shall make a good faith effort to assist each individual with exceptional needs to achieve the goals and objectives or benchmarks listed in the individualized education program of the pupil.

(d) Consistent with Section 56000.5 and clause (iv) of subparagraph (B) of paragraph (3) of subsection (d) of Section 1414 of Title 20 of the United States Code, it is the intent of the Legislature that, in making a determination of what constitutes an appropriate education to meet the unique needs of a deaf or hard-of-hearing pupil in the least restrictive environment, the individualized education program team shall consider the related services and program options that provide the pupil with an equal opportunity for communication access. The individualized education program team shall specifically discuss the communication needs of the pupil, consistent with the guidelines adopted pursuant to Section 56136 and Page 49274 of Volume 57 of the Federal Register, including all of the following:

(1) The pupil's primary language mode and language, which may include the use of spoken language with or without visual cues, or the use of sign language, or a combination of both.

(2) The availability of a sufficient number of age, cognitive, and language peers of similar abilities which may be met by consolidating services into a local plan areawide program or providing placement pursuant to Section 56361.

(3) Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the pupil's primary language mode and language consistent with existing law regarding teacher training requirements.

(4) Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities consistent with the Vocational Rehabilitation Act of 1973 as set forth in Section 794 of Title 29 of the United States Code and the Americans with Disabilities Act of 1990 as set forth in Section 12101, and following, of Title 42 of the United States Code.

(e) General Fund money made available to school districts or local agencies may not be used for any additional responsibilities and services associated with paragraphs (1) and (2) of subdivision (d), including the training of special education teachers and other specialists, even if those additional responsibilities or services are required pursuant to a judicial or state agency determination. Those responsibilities and services shall only be funded by a local educational agency as follows:

(1) The costs of those activities shall be funded from existing programs and funding sources.

(2) Those activities shall be supported by the resources otherwise made available to those programs.

(3) Those activities shall be consistent with Sections 56240 to 56243, inclusive.

(f) It is the intent of the Legislature that the communication skills of teachers who work with hard-of-hearing and deaf children be improved. This section does not remove the local educational agency's discretionary authority in regard to in-service activities.

SEC. 13. Section 56345.1 of the Education Code is amended to read:

56345.1. (a) Beginning at age 14, or younger, if determined by the individualized education program team pursuant to paragraph (1) of subsection (b) of Section 300.347 of Title 34 of the Code of Federal Regulations, a statement of the transition service needs of the pupil shall be included in the pupil's individualized education program and shall be updated annually. The statement shall be included under applicable components of the pupil's individualized education program that

focuses on the pupil's courses of study, such as participation in advanced-placement courses or a vocational education program.

(b) Beginning at age 16 or younger and annually thereafter, in accordance with Section 56462 and paragraph (30) of Section 1401 of Title 20 of the United States Code, a statement of needed transition services shall be included in the pupil's individualized education program, including whenever appropriate, a statement of interagency responsibilities or any needed linkages.

(c) The term ''transition services'' means a coordinated set of activities for an individual with exceptional needs that does the following:

(1) Is designed within an outcome-oriented process, that promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.

(2) Is based upon the individual pupil's needs, taking into account the pupil's preferences and interests.

(3) Includes instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(d) If a participating agency, other than the local educational agency, fails to provide the transition services described in the pupil's individualized education program in accordance with this section, the local educational agency shall reconvene the individualized education program team to identify alternative strategies to meet the transition service needs for the pupil set out in the program.

SEC. 14. Section 56346 of the Education Code is amended to read:

56346. (a) Informed parental consent shall be obtained before the initial provision of special education and related services to an individual with exceptional needs pursuant to clause (ii) of paragraph (1) of subsection (a) of Section 300.505 of Title 34 of the Code of Federal Regulations.

(b) A pupil may not be required to participate in all or part of any special education program, unless the parent is first informed, in writing, of the facts that make participation in the program necessary or desirable, and of the contents of the individualized education program, and after this notice, consents, in writing, to all or part of the individualized education program. If the parent does not consent to all of the components of the individualized education program, those components of the program to which the parent has consented shall be implemented so as not to delay providing instruction and services to the pupil.

(c) If the local educational agency determines that the part of the proposed special education program to which the parent does not consent is necessary to provide a free and appropriate public education to the pupil, a due process hearing shall be initiated pursuant to Chapter 5 (commencing with Section 56500), unless a prehearing mediation conference is held. During the pendency of the due process hearing, the local educational agency may reconsider the proposed individualized education program, may choose to meet informally with the parent pursuant to subdivision (b) of Section 56502, or may hold a mediation conference pursuant to Section 56503. As an alternative to holding a due process hearing, the parties may hold a prehearing mediation conference pursuant to Section 56500.3 to resolve any issue or dispute. If a due process hearing is held, the hearing decision shall be the final administrative determination and shall be binding upon the parties. While a prehearing mediation conference or due process hearing is pending, the pupil shall remain in his or her current placement, unless the parent and the local educational agency agree otherwise.

SEC. 15. Section 56365 of the Education Code is amended to read:

56365. (a) Services provided by nonpublic, nonsectarian schools, as defined pursuant to Section 56034, and nonpublic, nonsectarian agencies, as defined pursuant to Section 56035, shall be available. These services shall be provided pursuant to Section 56366, and in accordance with Section 300.401 of Title 34 of the Code of Federal Regulations, under contract with the district, special education local plan area, or county office to provide the appropriate special educational facilities, special education, or designated instruction and services required by the individual with exceptional needs if no appropriate public education program is available.

(b) Pupils enrolled in nonpublic, nonsectarian schools and agencies under this section shall be deemed to be enrolled in public schools for all purposes of Chapter 4 (commencing with Section 41600) of Part 24 and Section 42238. The district, special education local plan area, or county office shall be eligible to receive allowances under Chapter 7.2 (commencing with Section 56836) for services that are provided to individuals with exceptional needs pursuant to the contract.

(c) If the state participates in the federal program of assistance for state-operated or state-supported programs for individuals with exceptional needs (P.L. 89-313, Sec. 6), pupils enrolled in nonpublic, nonsectarian schools shall be deemed to be enrolled in state-supported institutions for all purposes of that program and shall be eligible to receive allowances under Chapter 7.2 (commencing with Section 56836) for supplemental services provided to individuals with exceptional needs pursuant to a contract with a district, special education local plan area, or county office of education. In order to participate in

the federal program, the state shall find that participation will not result in any additional expenditures from the General Fund.

(d) The district, special education local plan area, or county office shall pay to the nonpublic, nonsectarian school or agency the full amount of the tuition for individuals with exceptional needs that are enrolled in programs provided by the nonpublic, nonsectarian school pursuant to the contract.

(e) Before contracting with a nonpublic, nonsectarian school or agency outside of this state, the district, special education local plan area, or county office shall document its efforts to utilize public schools or to locate an appropriate nonpublic, nonsectarian school or agency program, or both, within the state.

(f) If a district, special education local plan area, or county office places a pupil with a nonpublic, nonsectarian school or agency outside of this state, the pupil's individualized education program team shall submit a report to the superintendent within 15 days of the placement decision. The report shall include information about the special education and related services provided by the out-of-state program placement and the costs of the special education and related services provided, and shall indicate the efforts of the local educational agency to locate an appropriate public school or nonpublic, nonsectarian school or agency, or a combination thereof, within the state. The superintendent shall submit a report to the State Board of Education on all placements made outside of this state.

(g) If a school district, special education local plan area, or county office of education decides to place a pupil with a nonpublic, nonsectarian school or agency outside of this state, that local educational agency shall indicate the anticipated date for the return of the pupil to a public or nonpublic, nonsectarian school or agency placement, or a combination thereof, located in the state and shall document efforts during the previous placement year to return the pupil.

(h) In addition to meeting the requirements of Section 56366.1, a nonpublic, nonsectarian school or agency that operates a program outside of this state shall be certified or licensed by that state to provide, respectively, special education and related services and designated instruction and related services to pupils under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(i) A nonpublic, nonsectarian school or agency that is located outside of this state is eligible for certification pursuant to Section 56366.1 only if a pupil is enrolled in a program operated by that school or agency pursuant to the recommendation of an individualized education program team in California, and if that pupil's parents or guardians reside in California.

(j) In accordance with subsections (b) and (c) of Section 300.402 of Title 34 of the Code of Federal Regulations, the department shall disseminate copies of applicable standards to each nonpublic, nonsectarian school and nonpublic, nonsectarian agency to which a district, special education local plan area, or county office has referred or placed an individual with exceptional needs and shall provide an opportunity for those nonpublic, nonsectarian schools and nonpublic, nonsectarian agencies to participate in the development and revision of state standards that apply to those entities.

SEC. 16. Section 56381 of the Education Code is amended to read:

56381. (a) A reassessment of the pupil, based upon procedures specified in Article 2 (commencing with Section 56320) shall be conducted at least once every three years or more frequently, if conditions warrant a reassessment, or if the pupil's parent or teacher requests a reassessment and a new individualized education program to be developed.

If the reassessment so indicates, a new individualized education program shall be developed.

(b) As part of any reassessment, the individualized education program team and other qualified professionals, as appropriate, shall do the following:

(1) Review existing assessment data on the pupil, including assessments and information provided by the parents of the pupil, as specified in clause (i) of paragraph (1) of subsection (a) of Section 300.533 of Title 34 of the Code of Federal Regulations, current classroom-based assessments and observations, and teacher and related services providers' observations.

(2) On the basis of the review conducted pursuant to paragraph (1), and input from the pupil's parents, identify what additional data, if any, is needed to determine:

(A) Whether the pupil continues to have a disability described in paragraph (3) of Section 1401 of Title 20 of the United States Code.

(B) The present levels of performance and educational needs of the pupil.

(C) Whether the pupil continues to need special education and related services.

(D) Whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the individualized education program of the pupil and to participate, as appropriate, in the general curriculum.

(c) The local educational agency shall administer tests and other assessment materials needed to produce the data identified by the individualized education program team.

(d) If the individualized education program team and other qualified professionals, as appropriate, determine that no additional data is needed to determine whether the pupil continues to be an individual with exceptional needs, the local educational agency shall notify the pupil's parents of that determination and the reasons for it, and the right of the parents to request an assessment to determine whether the pupil continues to be an individual with exceptional needs. The local educational agency is not required to conduct an assessment, unless requested by the pupil's parents.

(e) A local educational agency shall assess an individual with exceptional needs in accordance with this section and procedures specified in Article 2 (commencing with Section 56320), as provided in paragraph (2) of subsection (c) of Section 300.534 of Title 34 of the Code of Federal Regulations.

(f) A reassessment may not be conducted, unless the written consent of the parent is obtained prior to reassessment, except pursuant to subdivision (e) of Section 56506. Pursuant to paragraphs (1) and (2) of subsection (c) of Section 300.505 of Title 34 of the Code of Federal Regulations, informed parental consent need not be obtained for the reassessment of an individual with exceptional needs if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent and the child's parent has failed to respond. To meet the reasonable measure requirements of this subdivision, the local educational agency shall use procedures consistent with those set forth in subsection (d) of Section 300.345 of Title 34 of the Code of Federal Regulations.

(g) The individualized education program team and other qualified professionals referenced in subdivision (b) may conduct the review without a meeting, as provided in subsection (b) of Section 300.533 of Title 34 of the Code of Federal Regulations.

(h) Before determining that the individual is no longer an individual with exceptional needs, a local educational agency shall assess the individual in accordance with Section 56320 and this section, as appropriate, and Sections 300.532 and 300.533 of Title 34 of the Code of Federal Regulations, pursuant to paragraph (1) of subsection (c) of Section 300.534 of Title 34 of the Code of Federal Regulations.

SEC. 17. Section 56500.3 of the Education Code is amended to read:

56500.3. (a) It is the intent of the Legislature that parties to special education disputes be encouraged to seek resolution through mediation prior to filing a request for a due process hearing. It is also the intent of the Legislature that these voluntary prehearing request mediation conferences be an informal process conducted in a nonadversarial atmosphere to resolve issues relating to the identification, assessment,

or educational placement of the child, or the provision of a free appropriate public education to the child, to the satisfaction of both parties. Therefore, attorneys or other independent contractors used to provide legal advocacy services may not attend or otherwise participate in the prehearing request mediation conferences.

(b) This part does not preclude the parent or the public educational agency from being accompanied and advised by nonattorney representatives in the mediation conferences and consulting with an attorney prior to or following a mediation conference. For purposes of this section, ''attorney'' means an active, practicing member of the State Bar of California or another independent contractor used to provide legal advocacy services, but does not mean a parent of the pupil who is also an attorney.

(c) Requesting or participating in a mediation conference is not a prerequisite to requesting a due process hearing.

(d) All requests for a mediation conference shall be filed with the superintendent. The party initiating a mediation conference by filing a written request with the superintendent shall provide the other party to the mediation with a copy of the request at the same time the request is filed with the superintendent. The mediation conference shall be conducted by a person knowledgeable in the process of reconciling differences in a nonadversarial manner and under contract with the department pursuant to Section 56504.5. The mediator shall be knowledgeable in the laws and regulations governing special education.

(e) The prehearing mediation conference shall be scheduled within 15 days of receipt by the superintendent of the request for mediation. The mediation conference shall be completed within 30 days after receipt of the request for mediation unless both parties to the prehearing mediation conference agree to extend the time for completing the mediation. Pursuant to paragraph (3) of subsection (b) of Section 300.506 of Title 34 of the Code of Federal Regulations, and to encourage the use of mediation, the state shall bear the cost of the mediation process, including any meetings described in subsection (d) of Section 300.506 of Title 34 of the Code of Federal Regulations. The costs of mediation shall be included in the contract described in Section 56504.5.

(f) Based upon the mediation conference, the district superintendent, the county superintendent, or the director of the public educational agency, or his or her designee, may resolve the issue or issues. However, this resolution may not conflict with state or federal law and shall be to the satisfaction of both parties. A copy of the written resolution shall be mailed to each party within 10 days following the mediation conference.

(g) If the mediation conference fails to resolve the issues to the satisfaction of all parties, the party who requested the mediation conference has the option of filing for a state-level hearing pursuant to

Section 56505. The mediator may assist the parties in specifying any unresolved issues to be included in the hearing request.

(h) Any mediation conference held pursuant to this section shall be scheduled in a timely manner and shall be held at a time and place reasonably convenient to the parties to the dispute in accordance with paragraph (4) of subsection (b) of Section 300.506 of Title 34 of the Code of Federal Regulations.

(i) The mediation conference shall be conducted in accordance with regulations adopted by the board.

(j) Notwithstanding any procedure set forth in this chapter, a public educational agency and a parent may, if the party initiating the mediation conference so chooses, meet informally to resolve any issue or issues to the satisfaction of both parties prior to the mediation conference.

(k) The procedures and rights contained in this section shall be included in the notice of parent rights attached to the pupil's assessment plan pursuant to Section 56321.

SEC. 18. Section 56500.4 of the Education Code is amended to read:

56500.4. Pursuant to paragraphs (3) and (4) of subsection (b) of Section 1415 of Title 20 of the United States Code, and in accordance with Section 300.503 of Title 34 of the Code of Federal Regulations, written prior notice shall be given by the public agency to the parents or guardians of an individual with exceptional needs, or to the parents or guardians of a child upon initial referral for assessment.

SEC. 19. Section 56500.6 is added to the Education Code, to read:

56500.6. Due process and state complaint procedures for children enrolled in private schools by their parents pursuant to Sections 56170 to 56174.5, inclusive, shall be in accordance with Section 300.457 of Title 34 of the Code of Federal Regulations.

SEC. 20. Section 56502 of the Education Code is amended to read:

56502. (a) All requests for a due process hearing shall be filed with the superintendent in accordance with paragraphs (1) and (2) of subsection (c) of Section 300.507 of Title 34 of the Code of Federal Regulations.

(b) The superintendent shall develop a model form to assist parents and guardians in filing a request for due process that is in accordance with paragraph (3) of subsection (c) of Section 300.507 of Title 34 of the Code of Federal Regulations.

(c) The party initiating a due process hearing by filing a written request with the superintendent shall provide the other party to the hearing with a copy of the request at the same time as the request is filed with the superintendent.

(d) The superintendent shall take steps to ensure that within 45 days after receipt of the written hearing request the hearing is immediately

commenced and completed, including, any mediation requested at any point during the hearing process pursuant to paragraph (2) of subdivision (b) of Section 56501, and a final administrative decision is rendered, unless a continuance has been granted pursuant to Section 56505.

(e) Notwithstanding any procedure set forth in this chapter, a public education agency and a parent or guardian may, if the party initiating the hearing so chooses, meet informally to resolve any issue or issues relating to the identification, assessment, or education and placement of the child, or the provision of a free appropriate public education to the child, to the satisfaction of both parties prior to the hearing. The informal meeting shall be conducted by the district superintendent, county superintendent, or director of the public education agency or his or her designee. Any designee appointed pursuant to this subdivision shall have the authority to resolve the issue or issues.

(f) Upon receipt by the superintendent of a written request by the parent or guardian or public education agency, the superintendent or his or her designee or designees shall immediately notify, in writing, all parties of the request for the hearing and the scheduled date for the hearing. The notice shall advise all parties of all their rights relating to procedural safeguards. The superintendent or his or her designee shall provide both parties with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. This list shall include a brief description of the requirement to qualify for the services. The superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list.

SEC. 21. Section 56504.5 of the Education Code is amended to read:

56504.5. The department shall contract with a single, nonprofit organization or entity to conduct mediation conferences and due process hearings in accordance with Sections 300.506 and 300.508 of Title 34 of the Code of Federal Regulations.

SEC. 22. Section 56505 of the Education Code, as amended by Chapter 368 of the Statutes of 2003, is amended to read:

56505. (a) The state hearing shall be conducted in accordance with regulations adopted by the board.

(b) The hearing shall be held at a time and place reasonably convenient to the parent or guardian and the pupil.

(c) The hearing shall be conducted by a person knowledgeable in the laws and regulations governing special education and administrative hearings pursuant to Section 56504.5, and who has satisfactorily completed training pursuant to this subdivision. The superintendent shall establish standards for the training of hearing officers, the degree of specialization of the hearing officers, and the quality control

mechanisms to be used to ensure that the hearings are fair and the decisions are accurate. A due process hearing may not be conducted by any individual listed in subsection (a) of Section 300.508 of Title 34 of the Code of Federal Regulations. Pursuant to subsection (b) of Section 300.508 of Title 34 of the Code of Federal Regulations, a person who is qualified to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. The hearing officer shall encourage the parties to a hearing to consider the option of mediation as an alternative to a hearing.

(d) Pursuant to subsection (a) of Section 300.514 of Title 34 of the Code of Federal Regulations, during the pendency of the hearing proceedings, including the actual state level hearing, or judicial proceeding regarding a due process hearing, the pupil shall remain in his or her present placement, except as provided in Section 300.526 of Title 34 of the Code of Federal Regulations, unless the public agency and the parent or guardian agree otherwise. A pupil applying for initial admission to a public school shall, with the consent of his or her parent or guardian, be placed in the public school program until all proceedings have been completed. As provided in subsection (c) of Section 300.514 of Title 34 of the Code of Federal Regulations, if the decision of a hearing officer in a due process hearing or a state review official in an administrative appeal agrees with the pupil's parent or guardian that a change of placement is appropriate, that placement shall be treated as an agreement between the state or local agency and the parent or guardian.

(e) Any party to the hearing held pursuant to this section shall be afforded the following rights consistent with state and federal statutes and regulations:

(1) The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of individuals with exceptional needs.

(2) The right to present evidence, written arguments, and oral arguments.

(3) The right to confront, cross-examine, and compel the attendance of witnesses.

(4) The right to a written, or, at the option of the parents or guardians, electronic verbatim record of the hearing.

(5) The right to written, or, at the option of the parent or guardian, electronic findings of fact and decisions. The record of the hearing and the findings of fact and decisions shall be provided at no cost to parents or guardians in accordance with paragraph (2) of subsection (c) of Section 300.509 of Title 34 of the Code of Federal Regulations. The findings and decisions shall be made available to the public after any personally identifiable information has been deleted consistent with the confidentiality requirements of subsection (c) of Section 1417 of Title

20 of the United States Code and shall also be transmitted to the Advisory Commission on Special Education pursuant to paragraph (4) of subsection (h) of Section 1415 of Title 20 of the United States Code.

(6) The right to be informed by the other parties to the hearing, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues. Upon the request of a parent who is not represented by an attorney, the agency responsible for conducting hearings shall provide a mediator to assist the parent in identifying the issues and the proposed resolution of the issues.

(7) The right to receive from other parties to the hearing, at least five business days prior to the hearing, a copy of all documents and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing. Included in the material to be disclosed to all parties at least five business days prior to a hearing shall be all assessments completed by that date and recommendations based on the assessments that the parties intend to use at the hearing.

(8) The right, pursuant to paragraph (3) of subsection (a) of Section 300.509 of Title 34 of the Code of Federal Regulations, to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

(f) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision mailed to all parties to the hearing within 45 days from the receipt by the superintendent of the request for a hearing. Either party to the hearing may request the hearing officer to grant an extension. The extension shall be granted upon a showing of good cause. Any extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension.

(g) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(h) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

(i) This chapter does not preclude a party aggrieved by the findings and decisions in a hearing under this section from exercising the right to appeal the decision to a state court of competent jurisdiction. An aggrieved party may also exercise the right to bring a civil action in a district court of the United States without regard to the amount in controversy, pursuant to Section 300.512 of Title 34 of the Code of Federal Regulations. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of any administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), unless the public education agency and the parents of

the child agree otherwise, the child involved in the hearing shall remain in his or her present educational placement. Any action brought under this subdivision shall adhere to the provisions of subsection (b) of Section 300.512 of Title 34 of the Code of Federal Regulations.

(j) Any request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within three years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.

(k) Pursuant to subsection (c) of Section 300.508 of Title 34 of the Code of Federal Regulations, each public education agency shall keep a list of the persons who serve as due process hearing officers, in accordance with Section 56504.5, and the list shall include a statement of the qualifications of each of those persons. The list of hearing officers shall be provided to the public education agencies by the organization or entity under contract with the department to conduct due process hearings.

SEC. 23. Section 56505.1 of the Education Code is amended to read:

56505.1. The hearing officer may do any of the following during the hearing:

(a) Question a witness on the record prior to any of the parties doing so.

(b) With the consent of both parties to the hearing, request that conflicting experts discuss an issue or issues with each other while on the record.

(c) Visit the proposed placement site or sites when the physical attributes of the site or sites are at issue.

(d) Call a witness to testify at the hearing if all parties to the hearing consent to the witness giving testimony or the hearing is continued for at least five days after the witness is identified and before the witness testifies.

(e) Order that an impartial assessment, including an independent educational assessment, of the pupil be conducted for purposes of the hearing and continue the hearing until the assessment has been completed. The cost of any assessment ordered under this subdivision shall be at public expense pursuant to subsection (d) of Section 300.502 of Title 34 of the Code of Federal Regulations and included in the contract between the department and the organization or entity conducting the hearing.

(f) Bar introduction of any documents or the testimony of any witnesses not disclosed to the hearing officer at least five business days prior to the hearing and bar introduction of any documents or the testimony of any witnesses at the hearing without the consent of the other

party not disclosed to the parties at least five business days prior to the hearing pursuant to paragraph (7) of subdivision (e) of Section 56505.

(g) In decisions relating to the provision of related services by other public agencies, the hearing officer may call as witnesses independent medical specialists qualified to present evidence in the area of the pupil's medical disability. The cost for any witness called to testify under this subdivision shall be included in the contract between the department and the organization or entity conducting the hearing.

(h) Set a reasonable limit on the length of the hearing after consideration of all of the following:

(1) The issues to be heard.

(2) The complexity of the facts to be proven.

(3) The ability of the parties and their representatives, if any, to present their respective cases.

(4) The estimate of the parties as to the time needed to present their respective cases.

SEC. 24. Section 56506 of the Education Code is amended to read:

56506. In addition to the due process hearing rights enumerated in subdivision (b) of Section 56501, the following due process rights extend to the pupil and the parent:

(a) Written notice to the parent of his or her rights in language easily understood by the general public and in the native language of the parent, as defined in Section 300.19 of Title 34 of the Code of Federal Regulations, or other mode of communication used by the parent, unless to do so is clearly not feasible. The written notice of rights shall include, but not be limited to, those prescribed by Section 56341.

(b) The right to initiate a referral of a child for special education services pursuant to Section 56303.

(c) The right to obtain an independent educational assessment pursuant to subdivision (b) or (c) of Section 56329.

(d) The right to participate in the development of the individualized education program and to be informed of the availability under state and federal law of free appropriate public education and of all available alternative programs, both public and nonpublic.

(e) Written parental consent pursuant to Section 56321 shall be obtained before any assessment of the pupil is conducted, unless the public education agency prevails in a due process hearing relating to the assessment. In accordance with subsection (c) of Section 300.505 of Title 34 of the Code of Federal Regulations, informed parental consent need not be obtained in the case of a reassessment of the pupil if the local educational agency can demonstrate that it has taken reasonable measures to obtain consent and the pupil's parent has failed to respond.

(f) Written parental consent pursuant to Section 56321 shall be obtained before the pupil is placed in a special education program.

SEC. 25. Chapter 5.1 (commencing with Section 56515) is added to Part 30 of the Education Code, to read:

CHAPTER 5.1. CONFIDENTIALITY OF INFORMATION ABOUT INDIVIDUALS WITH EXCEPTIONAL NEEDS

56515. (a) In addition to the provisions of Chapter 6.5 (commencing with Section 49060) of Part 27, the confidentiality of personally identifiable information about individuals with exceptional needs shall be governed and protected in accordance with the provisions of Sections 300.560 to 300.577, inclusive, of Title 34 of the Code of Federal Regulations, including, notice to parents, access rights, records on more than one child, lists and types of locations of information, parental consent regarding the disclosure of personally identifiable information, fees for copies of records, amendment of records at parent's request, opportunity for a hearing, safeguards, destruction of information, children's privacy rights, enforcement, and disciplinary information about an individual with exceptional needs.

(b) Pursuant to paragraph (3) of subsection (b) of Section 300.500 of Title 34 of the Code of Federal Regulations, ''personally identifiable,'' as used in this part, includes all of the following information:

(1) The name of the child, the child's parent, or other family member.

(2) The address of the child.

(3) A personal identifier, including, but not limited to, the child's social security number, a pupil number, a list of personal characteristics, or other information that would make it possible to identify the child with reasonable certainty.

SEC. 26. Section 56863 of the Education Code is amended to read:

56863. The state hospitals, as part of the notification to parents of pupils of their rights pursuant to the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. Sec. 701 et seq.), and this part and implementing regulations, shall notify parents of the right that their child can be considered for education programs other than on state hospital grounds.

For the purposes of this section, the term ''parent of pupil'' shall mean a parent, a legal guardian, a conservator, a person acting as a parent of a child, or a surrogate parent appointed pursuant to Section 300.515 of Title 34 of the Code of Federal Regulations.

Information and records concerning state hospital patients in the possession of the Superintendent of Public Instruction shall be treated as confidential under Section 5328 of the Welfare and Institutions Code and the Federal Privacy Act of 1974, Public Law 93-579.

SEC. 27. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this

act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

SEC. 28. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to maintain federal funding for special education services for California's pupils with exceptional needs, it is necessary that this act take effect immediately.

CHAPTER 162

An act to amend Section 1560 of the Evidence Code and Section 1326 of the Penal Code, relating to subpoenas.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 1560 of the Evidence Code is amended to read:

1560. (a) As used in this article:

(1) ''Business'' includes every kind of business described in Section 1270.

(2) ''Record'' includes every kind of record maintained by a business.

(b) Except as provided in Section 1564, when a subpoena duces tecum is served upon the custodian of records or other qualified witness of a business in an action in which the business is neither a party nor the place where any cause of action is alleged to have arisen, and the subpoena requires the production of all or any part of the records of the business, it is sufficient compliance therewith if the custodian or other qualified witness, within five days after the receipt of the subpoena in any criminal action or within the time agreed upon by the party who served the subpoena and the custodian or other qualified witness, or within 15 days after the receipt of the subpoena in any civil action or within the time agreed upon by the party who served the subpoena and the custodian or other qualified witness, delivers by mail or otherwise a true, legible, and durable copy of all the records described in the subpoena to the clerk of the court or to the judge if there be no clerk or to another person described in subdivision (c) of Section 2026 of the

Code of Civil Procedure, together with the affidavit described in Section 1561.

(c) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness, and date of subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and directed as follows:

(1) If the subpoena directs attendance in court, to the clerk of the court, or to the judge thereof if there be no clerk.

(2) If the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business.

(3) In other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(d) Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are original documents and which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received. Records which are copies may be destroyed.

(e) As an alternative to the procedures described in subdivisions (b), (c), and (d), the subpoenaing party in a civil action may direct the witness to make the records available for inspection or copying by the party's attorney, the attorney's representative, or deposition officer as described in paragraph (3) of subdivision (d) of Section 2020 of the Code of Civil Procedure, at the witness' business address under reasonable conditions during normal business hours. Normal business hours, as used in this subdivision, means those hours that the business of the witness is normally open for business to the public. When provided with at least five business days' advance notice by the party's attorney, attorney's representative, or deposition officer, the witness shall designate a time period of not less than six continuous hours on a date certain for copying of records subject to the subpoena by the party's attorney, attorney's representative or deposition officer. It shall be the responsibility of the attorney's representative to deliver any copy of the records as directed in the subpoena. Disobedience to the deposition subpoena issued pursuant to this subdivision is punishable as provided in subdivision (h) of Section 2020 of the Code of Civil Procedure.

SEC. 2. Section 1326 of the Penal Code is amended to read:

1326. (a) The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It may be signed and issued by any of the following:

(1) A magistrate before whom a complaint is laid or his or her clerk, the district attorney or his or her investigator, or the public defender or his or her investigator, for witnesses in the state.

(2) The district attorney, his or her investigator, or, upon request of the grand jury, any judge of the superior court, for witnesses in the state, in support of an indictment or information, to appear before the court in which it is to be tried.

(3) The district attorney or his or her investigator, the public defender or his or her investigator, the clerk of the court in which a criminal action is to be tried, or, if there is no clerk, the judge of the court. The clerk or judge shall, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him or her, for witnesses in the state, as the defendant may require.

(4) The attorney of record for the defendant.

(b) A subpoena issued in a criminal action that commands the custodian of records or other qualified witness of a business to produce books, papers, documents, or records shall direct that those items be delivered by the custodian or qualified witness in the manner specified in subdivision (b) of Section 1560 of the Evidence Code. Subdivision (e) of Section 1560 of the Evidence Code shall not apply to criminal cases.

(c) In a criminal action, no party, or attorney or representative of a party, may issue a subpoena commanding the custodian of records or other qualified witness of a business to provide books, papers, documents, or records, or copies thereof, relating to a person or entity other than the subpoenaed person or entity in any manner other than that specified in subdivision (b) of Section 1560 of the Evidence Code. When a defendant has issued a subpoena to a person or entity that is not a party for the production of books, papers, documents, or records, or copies thereof, the court may order an in camera hearing to determine whether or not the defense is entitled to receive the documents. The court may not order the documents disclosed to the prosecution except as required by Section 1054.3.

(d) This section shall not be construed to prohibit obtaining books, papers, documents, or records with the consent of the person to whom the books, papers, documents, or records relate.

———

CHAPTER 163

An act to amend Sections 19720 and 19721 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 19720 of the Revenue and Taxation Code is amended to read:

19720. (a) Any person who does any of the following is liable for a penalty of not more than five thousand dollars ($5,000):

(1) Utters, passes, or negotiates a state-issued income tax refund warrant generated as a result of the filing of a return knowing that the recipient is not entitled to the refund.

(2) Procures a state-issued income tax refund, in any form, generated as a result of the filing of a return knowing that the recipient is not entitled to the refund.

(3) Aids, abets, advises, encourages, or counsels any individual to utter, pass, or negotiate a state-issued income tax refund warrant, or to procure a state-issued income tax refund, in any form, generated as a result of the filing of a return, knowing that the recipient is not entitled to a refund.

(b) The fact that an individual's name is endorsed to a state-issued refund warrant shall be prima facie evidence for all purposes that the refund warrant was actually signed by him or her.

(c) The penalty shall be recovered in the name of the people in any court of competent jurisdiction. Counsel for the Franchise Tax Board may, upon request of the district attorney or other prosecuting attorney, assist the prosecuting attorney in presenting the law or facts to recover the penalty at the trial of a criminal proceeding for violation of this section.

(d) The person is also guilty of a misdemeanor and upon conviction shall be punishable by a fine not to exceed ten thousand dollars ($10,000) or by imprisonment not to exceed one year, or both, at the discretion of the court, together with costs of investigation and prosecution.

(e) Any individual guilty under this part shall be subject to Section 502.01 of the Penal Code.

SEC. 2. Section 19721 of the Revenue and Taxation Code is amended to read:

19721. (a) Any person who, with intent to defraud, does any of the following is liable for a penalty of not more than ten thousand dollars ($10,000):

(1) Willfully utters, passes, or negotiates a state-issued income tax refund warrant generated as a result of the filing of a return knowing that the recipient is not entitled to the refund.

(2) Willfully procures a state-issued income tax refund, in any form, generated as a result of the filing of a return knowing that the recipient is not entitled to the refund.

(3) Willfully aids, abets, advises, encourages, or counsels any individual to utter, pass, or negotiate a state-issued income tax refund warrant, or to procure a state-issued income tax refund, in any form, generated as a result of the filing of a return, knowing the recipient is not entitled to the refund.

(b) The person is also punishable by imprisonment in a county jail not to exceed one year, or in the state prison, or by a fine not to exceed fifty thousand dollars ($50,000), or by both that fine and imprisonment, at the discretion of the court, together with the costs of investigation and prosecution.

(c) The fact that an individual's name is endorsed to a state-issued refund warrant shall be prima facie evidence for all purposes that the refund warrant was actually signed by him or her.

(d) The penalty shall be recovered in the name of the people in any court of competent jurisdiction. Counsel for the Franchise Tax Board may, upon request of the district attorney or other prosecuting attorney, assist the prosecuting attorney in presenting the law or facts to recover the penalty at the trial or a criminal proceeding for violation of this section.

(e) Any individual guilty under this part shall be subject to Section 502.01 of the Penal Code.

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 164

An act to amend Sections 1363.07, 1373.65, and 1373.96 of the Health and Safety Code, and to amend Sections 10113.8 and 10133.56 of the Insurance Code, relating to health care coverage.

[Approved by Governor July 15, 2004. Filed with
Secretary of State July 16, 2004.]

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

SECTION 1. Section 1363.07 of the Health and Safety Code is amended to read:

1363.07. (a) Each health care service plan shall send copies of the comparative benefit matrix prepared pursuant to Section 1363.06 on an annual basis, or more frequently as the matrix is updated by the department and the Department of Insurance, to solicitors and solicitor firms and employers with whom the plan contracts.

(b) Each health care service plan shall require its representatives and solicitors and soliciting firms with which it contracts, to provide a copy of the comparative benefit matrix to individuals when presenting any benefit package for examination or sale.

(c) Each health care service plan that maintains an Internet Web site shall make a downloadable copy of the comparative benefit matrix described in Section 1363.06 available through a link on its site to the Internet Web sites of the department and the Department of Insurance.

SEC. 2. Section 1373.65 of the Health and Safety Code is amended to read:

1373.65. (a) At least 75 days prior to the termination date of its contract with a provider group or a general acute care hospital, the health care service plan shall submit an enrollee block transfer filing to the department that includes the written notice the plan proposes to send to affected enrollees. The plan may not send this notice to enrollees until the department has reviewed and approved its content. If the department does not respond within seven days of the date of its receipt of the filing, the notice shall be deemed approved.

(b) At least 60 days prior to the termination date of a contract between a health care service plan and a provider group or a general acute care hospital, the plan shall send the written notice described in subdivision (a) by United States mail to enrollees who are assigned to the terminated provider group or hospital. A plan that is unable to comply with the timeframe because of exigent circumstances shall apply to the department for a waiver. The plan is excused from complying with this requirement only if its waiver application is granted by the department or the department does not respond within seven days of the date of its receipt of the waiver application. If the terminated provider is a hospital and the plan assigns enrollees to a provider group with exclusive admitting privileges to the hospital, the plan shall send the written notice to each enrollee who is a member of the provider group and who resides within a 15-mile radius of the terminated hospital. If the plan operates

as a preferred provider organization or assigns members to a provider group with admitting privileges to hospitals in the same geographic area as the terminated hospital, the plan shall send the written notice to all enrollees who reside within a 15-mile radius of the terminated hospital.

(c) The health care service plan shall send enrollees of a preferred provider organization the written notice required by subdivision (b) only if the terminated provider is a general acute care hospital.

(d) If an individual provider terminates his or her contract or employment with a provider group that contracts with a health care service plan, the plan may require that the provider group send the notice required by subdivision (b).

(e) If, after sending the notice required by subdivision (b), a health care service plan reaches an agreement with a terminated provider to renew or enter into a new contract or to not terminate their contract, the plan shall offer each affected enrollee the option to return to that provider. If an affected enrollee does not exercise this option, the plan shall reassign the enrollee to another provider.

(f) A health care service plan and a provider shall include in all written, printed, or electronic communications sent to an enrollee that concern the contract termination or block transfer, the following statement in not less than 8-point type: ''If you have been receiving care from a health care provider, you may have a right to keep your provider for a designated time period. Please contact your HMO's customer service department, and if you have further questions, you are encouraged to contact the Department of Managed Health Care, which protects HMO consumers, by telephone at its toll-free number, 1-888-HMO-2219, or at a TDD number for the hearing impaired at 1-877-688-9891, or online at www.hmohelp.ca.gov.''

(g) For purposes of this section, ''provider group'' means a medical group, independent practice association, or any other similar organization.

SEC. 3. Section 1373.96 of the Health and Safety Code is amended to read:

1373.96. (a) A health care service plan shall at the request of an enrollee, provide the completion of covered services as set forth in this section by a terminated provider or by a nonparticipating provider.

(b) (1) The completion of covered services shall be provided by a terminated provider to an enrollee who at the time of the contract's termination, was receiving services from that provider for one of the conditions described in subdivision (c).

(2) The completion of covered services shall be provided by a nonparticipating provider to a newly covered enrollee who, at the time his or her coverage became effective, was receiving services from that provider for one of the conditions described in subdivision (c).

(c) The health care service plan shall provide for the completion of covered services for the following conditions:

(1) An acute condition. An acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration. Completion of covered services shall be provided for the duration of the acute condition.

(2) A serious chronic condition. A serious chronic condition is a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain remission or prevent deterioration. Completion of covered services shall be provided for a period of time necessary to complete a course of treatment and to arrange for a safe transfer to another provider, as determined by the health care service plan in consultation with the enrollee and the terminated provider or nonparticipating provider and consistent with good professional practice. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date or 12 months from the effective date of coverage for a newly covered enrollee.

(3) A pregnancy. A pregnancy is the three trimesters of pregnancy and the immediate postpartum period. Completion of covered services shall be provided for the duration of the pregnancy.

(4) A terminal illness. A terminal illness is an incurable or irreversible condition that has a high probability of causing death within one year or less. Completion of covered services shall be provided for the duration of a terminal illness, which may exceed 12 months from the contract termination date or 12 months from the effective date of coverage for a new enrollee.

(5) The care of a newborn child between birth and age 36 months. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date or 12 months from the effective date of coverage for a newly covered enrollee.

(6) Performance of a surgery or other procedure that is authorized by the plan as part of a documented course of treatment and has been recommended and documented by the provider to occur within 180 days of the contract's termination date or within 180 days of the effective date of coverage for a newly covered enrollee.

(d) (1) The plan may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If

the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, the plan is not required to continue the provider's services beyond the contract termination date.

(2) Unless otherwise agreed by the terminated provider and the plan or by the individual provider and the provider group, the services rendered pursuant to this section shall be compensated at rates and methods of payment similar to those used by the plan or the provider group for currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the terminated provider. Neither the plan nor the provider group is required to continue the services of a terminated provider if the provider does not accept the payment rates provided for in this paragraph.

(e) (1) The plan may require a nonparticipating provider whose services are continued pursuant to this section for a newly covered enrollee to agree in writing to be subject to the same contractual terms and conditions that are imposed upon currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the nonparticipating provider, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the nonparticipating provider does not agree to comply or does not comply with these contractual terms and conditions, the plan is not required to continue the provider's services.

(2) Unless otherwise agreed upon by the nonparticipating provider and the plan or by the nonparticipating provider and the provider group, the services rendered pursuant to this section shall be compensated at rates and methods of payment similar to those used by the plan or the provider group for currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the nonparticipating provider. Neither the plan nor the provider group is required to continue the services of a nonparticipating provider if the provider does not accept the payment rates provided for in this paragraph.

(f) The amount of, and the requirement for payment of, copayments, deductibles, or other cost sharing components during the period of completion of covered services with a terminated provider or a nonparticipating provider are the same as would be paid by the enrollee if receiving care from a provider currently contracting with or employed by the plan.

(g) If a plan delegates the responsibility of complying with this section to a provider group, the plan shall ensure that the requirements of this section are met.

(h) This section shall not require a plan to provide for completion of covered services by a provider whose contract with the plan or provider group has been terminated or not renewed for reasons relating to a medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Profession Code, or fraud or other criminal activity.

(i) This section shall not require a plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract. This section shall not apply to a newly covered enrollee covered under an individual subscriber agreement who is undergoing a course of treatment on the effective date of his or her coverage for a condition described in subdivision (c).

(j) This section shall not apply to a newly covered enrollee who is offered an out-of-network option or to a newly covered enrollee who had the option to continue with his or her previous health plan or provider and instead voluntarily chose to change health plans.

(k) The provisions contained in this section are in addition to any other responsibilities of a health care service plan to provide continuity of care pursuant to this chapter. Nothing in this section shall preclude a plan from providing continuity of care beyond the requirements of this section.

(*l*) The following definitions apply for the purposes of this section:

(1) ''Individual provider'' means a person who is a licentiate, as defined in Section 805 of the Business and Professions Code, or a person licensed under Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code.

(2) ''Nonparticipating provider'' means a provider who is not contracted with a health care service plan.

(3) ''Provider'' shall have the same meaning as set forth in subdivision (i) of Section 1345.

(4) ''Provider group'' means a medical group, independent practice association, or any other similar organization.

SEC. 4. Section 10113.8 of the Insurance Code is amended to read:

10113.8. (a) Each health insurer that maintains an Internet Web site shall make a downloadable copy of the comparative benefit matrix prepared pursuant to Section 10127.14 available through a link on its site to the Internet Web sites of the department and the Department of Managed Health Care.

(b) Each health insurer shall send copies of the comparative benefit matrix on an annual basis, or more frequently as the matrix is updated by the department and the Department of Managed Health Care, to solicitors and solicitor firms and employers with whom it contracts. Each health insurer shall require its representatives and the solicitors and soliciting firms with which it contracts, to provide a copy of the

comparative benefit matrix to individuals when presenting any benefit package for examination or sale.

(c) This section shall not apply to accident-only, specified disease, hospital indemnity, CHAMPUS supplement, long-term care, Medicare supplement, dental-only, or vision-only insurance policies.

SEC. 5. Section 10133.56 of the Insurance Code is amended to read:

10133.56. (a) A health insurer that enters into a contract with a professional or institutional provider to provide services at alternative rates of payment pursuant to Section 10133 shall, at the request of an insured, arrange for the completion of covered services by a terminated provider, if the insured is undergoing a course of treatment for any of the following conditions:

(1) An acute condition. An acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration. Completion of covered services shall be provided for the duration of the acute condition.

(2) A serious chronic condition. A serious chronic condition is a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain remission or prevent deterioration. Completion of covered services shall be provided for a period of time necessary to complete a course of treatment and to arrange for a safe transfer to another provider, as determined by the health insurer in consultation with the insured and the terminated provider and consistent with good professional practice. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date.

(3) A pregnancy. A pregnancy is the three trimesters of pregnancy and the immediate postpartum period. Completion of covered services shall be provided for the duration of the pregnancy.

(4) A terminal illness. A terminal illness is an incurable or irreversible condition that has a high probability of causing death within one year or less. Completion of covered services shall be provided for the duration of a terminal illness, which may exceed 12 months from the contract termination date.

(5) The care of a newborn child between birth and age 36 months. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date.

(6) Performance of a surgery or other procedure that has been recommended and documented by the provider to occur within 180 days of the contract's termination date.

(b) The insurer may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section, to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, the insurer is not required to continue the provider's services beyond the contract termination date.

(c) Unless otherwise agreed upon between the terminated provider and the insurer or between the terminated provider and the provider group, the agreement shall be construed to require a rate and method of payment to the terminated provider, for the services rendered pursuant to this section, that are the same as the rate and method of payment for the same services while under contract with the insurer and at the time of termination. The provider shall accept the reimbursement as payment in full and shall not bill the insured for any amount in excess of the reimbursement rate, with the exception of copayments and deductibles pursuant to subdivision (e).

(d) Notice as to the process by which an insured may request completion of covered services pursuant to this section shall be provided in any insurer evidence of coverage and disclosure form issued after March 31, 2004. An insurer shall provide a written copy of this information to its contracting providers and provider groups. An insurer shall also provide a copy to its insureds upon request.

(e) The payment of copayments, deductibles, or other cost sharing components by the insured during the period of completion of covered services with a terminated provider shall be the same copayments, deductibles, or other cost sharing components that would be paid by the insured when receiving care from a provider currently contracting with the insurer.

(f) If an insurer delegates the responsibility of complying with this section to its contracting entities, the insurer shall ensure that the requirements of this section are met.

(g) For the purposes of this section:

(1) ''Provider'' means a person who is a licentiate as defined in Section 805 of the Business and Professions Code or a person licensed under Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code.

(2) ''Terminated provider'' means a provider whose contract to provide services to insureds is terminated or not renewed by the insurer or one of the insurer's contracting provider groups. A terminated provider is not a provider who voluntarily leaves the insurer or contracting provider group.

(3) ''Provider group'' includes a medical group, independent practice association, or any other similar organization.

(h) This section shall not require an insurer or provider group to provide for the completion of covered services by a provider whose contract with the insurer or provider group has been terminated or not renewed for reasons relating to medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Professions Code, or fraud or other criminal activity.

(i) This section shall not require an insurer to cover services or provide benefits that are not otherwise covered under the terms and conditions of the insurer contract.

(j) The provisions contained in this section are in addition to any other responsibilities of insurers to provide continuity of care pursuant to this chapter. Nothing in this section shall preclude an insurer from providing continuity of care beyond the requirements of this section.

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 165

An act to add Section 160 to the Penal Code, relating to bail services.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 160 is added to the Penal Code, to read:

160. (a) No bail licensee may employ, engage, solicit, pay, or promise any payment, compensation, consideration or thing of value to any person incarcerated in any prison, jail, or other place of detention for the purpose of that person soliciting bail on behalf of the licensee. A violation of this section is a misdemeanor.

(b) Nothing in this section shall prohibit prosecution under Section 1800 or 1814 of the Insurance Code, or any other 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 166

An act to amend Section 1299.12 of, and to add Section 1299.14 to, the Penal Code, relating to bail.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 1299.12 of the Penal Code is amended to read:

1299.12. This article shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 2. Section 1299.14 is added to the Penal Code, to read:

1299.14. The California Research Bureau in the California State Library shall conduct a study of the structure and implementation of the Bail Fugitive Recovery Act. The bureau shall design and complete a study evaluating the training requirements and regulatory status for persons subject to the act, and whether the provisions of the act have improved the process for the recovery of fugitives from bail. In conducting the study, the bureau shall survey a representative sampling of law enforcement agencies, bail associations, and the state departments or agencies that certify the training courses. The bureau shall submit the published findings of the study to the Legislature no later than January 1, 2009.

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 167

An act to amend Sections 77225, 77226, 77229, 77230, 77251, 77252, 77253, 77254, 77255, 77258, 77262, 77264, 77265, 77285, 77289, 77296, 77297, 77298, 77311, 77312, 77313, 77314, 77316, 77317, 77318, 77319, 77320, 77331, 77332, 77333, 77352, 77371, 77373, 77374 of, and to add Section 77260.5 to, the Food and Agricultural Code, relating to the California Pepper Commission.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 77225 of the Food and Agricultural Code is amended to read:

77225. (a) The commission shall be composed of five districts. The boundaries of each district shall be established by a two-thirds vote of the full commission, that is concurred in by the secretary. District boundaries shall be established to reflect similar total production among the districts in order to ensure proper representation by producers. These boundaries need not coincide with county lines.

(b) The boundaries of any district may be changed by a two-thirds vote of the full commission, that is concurred in by the secretary, when necessary to maintain similar total production among the districts and to ensure proper representation by producers.

SEC. 2. Section 77226 of the Food and Agricultural Code is amended to read:

77226. (a) ''Handler'' means any person engaged in marketing of peppers which the person has produced, purchased, or acquired from a producer, or is marketing on behalf of a producer whether as owner, agent, employee, broker, or otherwise. ''Handler'' does not include any person who handles less than 100 tons of fresh peppers, or the equivalent in dehydrated peppers or pepper seed, in a marketing year.

(b) ''Handle'' means to engage in the business of a handler.

(c) The tonnage threshold specified in subdivision (a) may be increased by a two-thirds vote of the commission.

(d) The tonnage threshold specified in subdivision (a) may be decreased only if approved by referendum pursuant to Sections 77311 to 77316, inclusive. For purposes of a referendum conducted pursuant

to this subdivision, the terms ''producer'' and ''handler'' in Section 77311 to 77316, inclusive, includes persons who would become subject to this chapter if the referendum is approved.

SEC. 3. Section 77229 of the Food and Agricultural Code is amended to read:

77229. ''Marketing year'' or ''fiscal year'' means the period beginning March 1 of any year and extending through the last day of February of the next year.

SEC. 4. Section 77230 of the Food and Agricultural Code is amended to read:

77230. (a) ''Producer'' means any person in this state who grows peppers for market and who, upon request, provides proof of commodity sale. ''Producer'' does not include any person who grows less than 10 acres of peppers, or produces less than 100 tons of fresh peppers, or the equivalent in dry peppers or pepper seed, in the current marketing year.

(b) The acreage and tonnage thresholds specified in subdivision (a) may be decreased only if approved by referendum pursuant to Section 77311 to 77316, inclusive. For purposes of a referendum conducted pursuant to this subdivision, the terms ''producer'' and ''handler'' in Sections 77311 to 77316, inclusive, include persons who would become subject to this chapter if the referendum is approved.

SEC. 5. Section 77251 of the Food and Agricultural Code is amended to read:

77251. (a) There is in the state government the California Pepper Commission. The commission shall be composed of five pepper producers, five pepper handlers, one public member, and may include two at-large members at the discretion of the commission.

(b) Five producers, one from each district, shall be elected by and from producers within the respective districts. Five handlers, representing the major categories of pepper handling as determined by the commission, shall be elected by and from other qualified handlers engaged in the same activity. The determination of what the major categories of pepper handling activities are, and any subsequent change to the categories shall be made by a two-thirds vote of the full commission that is concurred in by the secretary.

(c) The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

(d) Two at-large members may be elected by the producers and handlers on the commission from among individuals who have a financial interest in the California pepper industry but who are not necessarily producers or handlers as defined in this article.

(e) The secretary and other appropriate individuals as determined by the commission shall be ex officio members of the commission.

SEC. 5.1. Section 77252 of the Food and Agricultural Code is amended to read:

77252. (a) The secretary may require the commission to correct or cease any existing activity or function that is determined by the secretary not to be in the public interest or that is in violation of this chapter.

(b) If the commission refuses or fails to cease these activities or functions or to make corrections required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities or functions of the commission until the time that the cessation or correction of activities or functions as required by the secretary has been accomplished by the commission.

(c) Actions of the commission in violation of the written notice are without legal force or effect. The secretary, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed activities or functions that are the subject of the written notice.

(d) Upon service of the written notice, the secretary shall notify the commission in writing of the specific acts that the secretary determines are not in the public interest or are in violation of this chapter, the secretary's reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and the secretary's recommendations as to what will make the activities or functions acceptable.

SEC. 5.2. Section 77253 of the Food and Agricultural Code is amended to read:

77253. The commission or the secretary may bring an action for judicial relief from the secretary's written notice, or from noncompliance by the commission with the written notice, as the case maybe, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

SEC. 5.3. Section 77254 of the Food and Agricultural Code is amended to read:

77254. When the secretary is required to concur in a decision of the commission, the secretary shall give his or her response to the commission within 15 working days from notification of the decision. The response may be a request that additional information be provided.

SEC. 5.4. Section 77255 of the Food and Agricultural Code is amended to read:

77255. The commission shall reimburse the secretary for all expenditures incurred by the secretary in carrying out his or her duties and responsibilities pursuant to this chapter. However, a court may, if it finds that the secretary acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the

responsibility for payment of the secretary's legal costs with regard to that action.

SEC. 5.5. Section 77258 of the Food and Agricultural Code is amended to read:

77258. Any vacancy on the commission occurring by the failure of the public member or alternate member to continue in his or her position due to a change in status making the member ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled for the unexpired portion of the term by the secretary from nominees recommended by the commission. That person shall fulfill all the qualifications set forth in this article as required for the member whose office he or she is to fill.

SEC. 6. Section 77260.5 is added to the Food and Agricultural Code, to read:

77260.5. Any at-large member elected to the commission, and his or her alternate shall have a financial interest in the California pepper industry and shall have all the rights and privileges of any other member or alternate member, respectively, of the commission.

SEC. 7. Section 77262 of the Food and Agricultural Code is amended to read:

77262. The term of office of all members and alternate members of the commission, except ex officio members, shall be three years, beginning on the first day of February following his or her election and until qualified successors are elected.

SEC. 8. Section 77264 of the Food and Agricultural Code is amended to read:

77264. A quorum of the commission shall be seven voting members of the commission. An alternate producer or handler member, respectively, may serve in the absence of a member if the member's alternate is absent and the action is necessary to establish a quorum. Unless specified otherwise in this chapter, the vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the commission.

SEC. 8.1. Section 77265 of the Food and Agricultural Code is amended to read:

77265. The secretary or his or her representatives shall be notified and may attend each meeting of the commission and any committee meeting of the commission.

SEC. 8.2. Section 77285 of the Food and Agricultural Code is amended to read:

77285. The commission may employ a person to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel, necessary to carry out this chapter. The commission may retain a management firm

or the staff from any board, commission, or committee of the state or federal government to perform the functions prescribed by this section under the control of the commission. If the person engages in any conduct that the secretary determines is not in the public interest or that is in violation of this chapter, the secretary shall notify the commission of the conduct and request that corrective and, if appropriate, disciplinary action be taken by the commission. In the event that the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the secretary, the secretary may suspend or discharge the person.

SEC. 8.3. Section 77289 of the Food and Agricultural Code is amended to read:

77289. The commission shall keep accurate books, records, and accounts of all of its dealings which shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the secretary. A summary of the audit shall be reported to all producers and handlers, a copy of which shall also be submitted to the department. In addition, the secretary may, as he or she determines necessary, conduct or cause to be conducted a fiscal and compliance audit of the commission.

SEC. 8.4. Section 77296 of the Food and Agricultural Code is amended to read:

77296. The commission shall establish an annual budget according to accepted accounting practices. The budget shall be concurred in by the secretary prior to disbursement of funds, except for disbursements made pursuant to Section 77286.

SEC. 8.5. Section 77297 of the Food and Agricultural Code is amended to read:

77297. The commission shall submit to the secretary for his or her concurrence, an annual statement of contemplated activities authorized pursuant to this chapter.

SEC. 8.6. Section 77298 of the Food and Agricultural Code is amended to read:

77298. The commission and the secretary shall keep confidential and shall not disclose, except when required in a judicial proceeding, all lists of producers and handlers in their possession.

SEC. 8.7. Section 77311 of the Food and Agricultural Code is amended to read:

77311. (a) Within 30 days of the effective date of this chapter, the secretary shall have established a list of producers and handlers eligible to vote on implementation of this chapter. In establishing the list, the secretary may require that producers, handlers, and others submit the names and mailing addresses of all producers and handlers. The secretary also may require that the information provided include the

quantity of peppers produced by each producer and the quantity of peppers handled by each handler, or, in the alternative, may establish procedures for receiving the information at the time of the referendum vote specified in Section 77312. The request for the information shall be in writing and shall be filed within 10 days following receipt of the request.

(b) Any producer or handler whose name does not appear upon the appropriate list may have his or her name placed on the list by filing with the secretary a signed statement identifying himself or herself as a producer or handler. Failure to be on the list does not exempt the person from paying assessments and does not invalidate any industry votes conducted pursuant to this article.

(c) Proponents and opponents of the commission may contact producers and handlers on the lists in a form and manner prescribed by the secretary so long as all expenses associated with the contacts are paid in advance.

SEC. 8.8. Section 77312 of the Food and Agricultural Code is amended to read:

77312. This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the secretary finds as follows in a referendum vote conducted by the secretary:

(a) At least 40 percent of the total number of producers from the list established by the secretary pursuant to this article have participated and that either of the following has occurred:

(1) Sixty-five percent of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed a majority of the total quantity of peppers in the preceding marketing year by all of the producers who voted in the referendum.

(2) A majority of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed 65 percent or more of the total quantity of peppers in the preceding marketing year by all of the producers who voted in the referendum.

(b) At least 40 percent of the total number of handlers from the list established by the secretary pursuant to this article, have participated, and that either of the following has occurred:

(1) Sixty-five percent of the handlers who voted in the referendum voted in favor of this chapter, and the handlers so voting handled a majority of the total quantity of peppers in the preceding marketing year by all of the handlers who voted in the referendum.

(2) A majority of the handlers who voted in the referendum voted in favor of this chapter, and the handlers so voting handled 65 percent or more of the total quantity of peppers in the preceding marketing year by all of the handlers who voted in the referendum.

SEC. 8.9. Section 77313 of the Food and Agricultural Code is amended to read:

77313. The secretary shall use fresh weight in calculating the volume voted pursuant to Section 77312. For converting dry weight and seed weight to fresh equivalent weight the secretary shall use the following ratios: 5.3 to 1 for dry weight and 220 to 1 for seed weight.

SEC. 8.91. Section 77314 of the Food and Agricultural Code is amended to read:

77314. The secretary shall establish a period in that to conduct the referendum which shall not be less than 10 days nor more than 60 days in duration, and may prescribe additional procedures that may be necessary to conduct the referendum. If the initial period established is less than 60 days, the secretary may extend the period, however, the total referendum period may not exceed 60 days.

SEC. 8.92. Section 77316 of the Food and Agricultural Code is amended to read:

77316. If the secretary finds that a favorable vote has been given as provided in Section 77312, the secretary shall certify and give notice of the favorable vote to all affected producers and handlers whose names and addresses are on file with the secretary.

SEC. 8.93. Section 77317 of the Food and Agricultural Code is amended to read:

77317. If the secretary finds that a favorable vote has not been given as provided in Section 77312, the secretary shall certify and declare this chapter inoperative. The director may conduct another implementation referendum vote one year or more after the previous vote has been taken.

SEC. 8.94. Section 77318 of the Food and Agricultural Code is amended to read:

77318. Upon certification of the commission, the secretary shall do the following:

(a) Contact all producers in each district by mail or call meetings of producers in each district for the purpose of nominating and electing persons to the commission. All producers on the secretary's list shall be given written notice of any election meetings at least 10 days prior to the meeting date. To be eligible for election to the commission, producer nominees must present to the secretary a nomination petition with the signatures of at least three eligible producers from the district from which the nominee is seeking election.

(b) Contact all handlers by mail or by calling a meeting for the purpose of nominating and electing persons to the commission. All handlers on the secretary's list shall be given written notice of any election meetings at least 10 days prior to the meeting date. To be eligible for election to the commission, handler nominees must present to the secretary a nomination petition with the signatures of at least two

eligible handlers who are engaged in the same type of handler activity as the handler seeking nomination.

SEC. 8.95. Section 77319 of the Food and Agricultural Code is amended to read:

77319. Subsequent to the first election of members of the commission pursuant to this chapter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures that are established by the commission with the concurrence of the secretary.

SEC. 8.96. Section 77320 of the Food and Agricultural Code is amended to read:

77320. (a) Prior to the referendum vote conducted by the secretary pursuant to Section 77312, the proponents of the commission shall deposit with the secretary the amount that the secretary deems necessary to defray the expenses of preparing the necessary lists and information and conducting the vote.

(b) Any funds not used in carrying out Section 77312 shall be returned to the proponents of the commission who deposited the funds with the secretary.

(c) Upon establishment of the commission, the commission is authorized to reimburse the proponents of the commission for any funds deposited with the secretary that were used in carrying out Section 77312 and for any legal expenses and costs incurred in establishing the commission.

SEC. 9. Section 77331 of the Food and Agricultural Code is amended to read:

77331. (a) The commission shall establish the assessment for the following marketing year not later than March 1 of each year, or as soon thereafter as is possible.

(b) The assessment for the 1989–90 marketing year shall not exceed twenty-five cents ($0.25) per ton for producers and twenty-five cents ($0.25) per ton for handlers on all peppers grown and shipped on a wet pound or ton basis by producers and handled by handlers. Thereafter, the assessment shall not exceed one dollar ($1) per ton for producers and one dollar ($1) per ton for handlers.

(c) The assessment for the 1989–90 marketing year shall not exceed $0.00065 per pound for producers and $0.00065 per pound for handlers on all peppers grown and shipped on a dry pound basis by producers and handled by handlers. Thereafter, the assessment shall not exceed a maximum of $0.0026 per pound for producers and $0.0026 per pound for handlers.

(d) The assessment for the 1989–90 marketing year shall not exceed two cents ($0.02) per pound for producers and two cents ($0.02) per pound for handlers on all planting seed grown by producers and handled

by handlers. Thereafter, the assessment shall not exceed a maximum of eight cents ($0.08) per pound for producers and eight cents ($0.08) per pound for handlers.

(e) The handler shall deduct the producer assessment from amounts paid by him or her to the producer and shall be a trustee of these funds and the assessment owed by the handler until they are paid to the commission at the time and in the manner prescribed by the commission.

(f) A fee greater than the amount provided in this section may not be charged unless and until a greater fee is approved pursuant to the procedures specified in Section 77312.

SEC. 10. Section 77332 of the Food and Agricultural Code is amended to read:

77332. (a) Unless specified otherwise, this chapter does not apply to persons who grow peppers only for the producer's home use or who grow or produce less than the number of acres or tons established pursuant to Section 77230 of fresh peppers, or the equivalent in dry peppers or pepper seed, in the current marketing year. However, any such person who markets peppers shall file an affidavit with the commission establishing that the person grows less than 10 acres of peppers or produces less than 100 tons of fresh peppers, or the equivalent in dry peppers or pepper seed. The commission shall then determine whether the affidavit should be approved.

(b) Unless specified otherwise, this chapter does not apply to any person who handles less than the number of tons of fresh peppers established pursuant to Section 77226, or the equivalent in dehydrated peppers or pepper seed, in the current marketing year. However, any person who is handling peppers shall file an affidavit with the commission specifying that the person handles less than the number of tons of peppers established pursuant to Section 77226. The commission shall, upon receipt of the affidavit, determine whether this chapter applies to that person.

SEC. 11. Section 77333 of the Food and Agricultural Code is amended to read:

77333. Every person who handles peppers in California, including persons who handle less than the tonnage threshold established pursuant to Section 77226, shall keep a complete and accurate record of all peppers handled with the name of the producer whose peppers were handled. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be preserved by the handler for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

SEC. 12. Section 77352 of the Food and Agricultural Code is amended to read:

77352. The commission shall establish procedures for the purpose of according individuals aggrieved by its actions or determinations an informal hearing before the commission, or before a committee of the commission designated for this purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the director shall be subject to judicial review upon petition filed with the appropriate superior court.

SEC. 13. Section 77371 of the Food and Agricultural Code is amended to read:

77371. Between May 1, 1993, and April 30, 1994, the commission shall cause a referendum to be conducted among producers and handlers to determine whether the operations of this chapter shall be approved and continued in effect. A favorable vote under this chapter shall be found if the secretary determines from the referendum that a majority of the eligible producers and handlers voting in the referendum voted in favor of continuing the operations of this chapter. If the secretary finds that a favorable vote has been given, the secretary shall so certify and this chapter shall remain effective. If the secretary finds that a favorable vote has not been given, the secretary shall so certify and declare the operations of this chapter suspended upon expiration of the marketing season ending April 30, 1994. Thereupon, the operation of the commission shall be concluded and funds distributed in the manner provided in Section 77375. No bond or security shall be required for any such referendum.

SEC. 14. Section 77373 of the Food and Agricultural Code is amended to read:

77373. (a) Upon a finding by a two-thirds vote of the full commission that the operation of this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operation of this chapter be suspended. However, any suspension shall not become effective until the expiration of the current marketing year.

(b) The secretary shall, upon receipt of the recommendation, or may, after a public hearing to review a petition filed with the director requesting a suspension signed by 20 percent of the producers by number who produced not less than 20 percent of the volume of peppers in the immediately preceding marketing year, and 20 percent of the handlers by number who handled not less than 20 percent of the volume of peppers in the immediately preceding marketing year, hold a referendum among the producers and handlers to determine if the operations of the commission shall be suspended. However, the secretary shall not hold a referendum as a result of the petition unless the petitioner shows, by the weight of evidence, that the operation of this chapter has not tended to effectuate its declared purposes.

(c) The secretary shall establish a referendum period, that shall not be less than 10 days nor more than 60 days in duration. The director may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period. The secretary shall suspend operation of this chapter if the director finds either one of the following has occurred:

(1) At least 40 percent of the total number of producers from the list established by the director have participated in the referendum:

(A) Sixty-five percent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed a majority of the total quantity of peppers in the preceding marketing year by all of the producers who voted in the referendum.

(B) A majority of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed 65 percent or more of the total quantity of peppers in the preceding marketing year by all of the producers who voted in the referendum.

(2) At least 40 percent of the total number of handlers from the list established by the director have participated in the referendum:

(A) Sixty-five percent or more of the handlers who voted in the referendum voted in favor or suspension, and the handlers so voting handled a majority of the total quantity of peppers in the preceding marketing year by all of the handlers who voted in the referendum.

(B) A majority of the handlers who voted in the referendum voted in favor of suspension, and the handlers so voting handled 65 percent or more of the total quantity of peppers in the preceding marketing year by all of the handlers who voted in the referendum.

SEC. 15. Section 77374 of the Food and Agricultural Code is amended to read:

77374. (a) The secretary shall terminate the commission at the end of the then current marketing year if the director finds that the termination of the commission is requested in writing, within a 90-day period, by at least 51 percent of the eligible producers that produce at least 51 percent of the total volume of peppers and at least 51 percent of the eligible handlers that handle at least 51 percent of the total volume of peppers.

(b) The person or persons originating the request shall file a written notice with the secretary in a manner that establishes the date the request is initiated. Any person may withdraw his or her name from the petition requesting the termination prior to the time the request is presented to the secretary.

(c) The signatures to the petition requesting the termination need not all be appended to one sheet of paper. Each person signing the petition

shall specify his or her place of business in a manner that will enable the location to be readily ascertained.

(d) The petition shall bear a copy of the notice of intention to terminate. Signatures shall be secured within the time limit specified in this section.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 168

An act to add Chapter 5.1 (commencing with Section 16524) to Part 4 of Division 9 of the Welfare and Institutions Code, relating to child welfare services.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Chapter 5.1 (commencing with Section 16524) is added to Part 4 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 5.1. CHILD WELFARE SERVICES PROGRAM IMPROVEMENT FUND

16524. (a) The Child Welfare Services Program Improvement Fund is hereby established in the State Treasury. The fund shall consist of donated grants, gifts, or bequests made to the state from private sources, and the moneys in the fund shall be expended, upon appropriation by the Legislature, to enhance the state's ability to provide a comprehensive system of supports that promote positive outcomes for children and families.

(b) To the extent possible, the department shall use moneys in the fund as a match to obtain federal participation in the cost of eligible activities.

(c) Moneys made available through the Child Welfare Services Program Improvement Fund shall be used to augment federal, state, or county funds made available for the child welfare services program.

(d) It is the intent of the Legislature that moneys in the Child Welfare Services Program Improvement Fund shall provide for activities including, but not limited to, the following:

(1) Providing mandated training statewide for all child welfare services social workers.

(2) Standardizing training so that all foster parents and relative caregivers in the state receive the same level and quality of training.

(3) Expediting the implementation of evidence-based practices, as recommended in the Child Welfare Services (CWS) Redesign.

(4) Supporting the state's ability to achieve improved outcomes for children and families consistent with the terms of the State of California Program Improvement Plan (PIP) for the Child Welfare Services Program.

(5) Supporting technical assistance efforts for counties.

CHAPTER 169

An act to amend Section 44253.10 of the Education Code, relating to teaching credentials.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 44253.10 of the Education Code is amended to read:

44253.10. (a) A teacher with a basic teaching credential may be assigned to provide specially designed content instruction delivered in English, as defined in subdivision (b) of Section 44253.2, to limited-English-proficient pupils only if the following conditions are met:

(1) The teacher, as of January 1, 1999, is a permanent employee of a school district, a county office of education, or a school administered under the authority of the Superintendent of Public Instruction, or was previously a permanent employee and then was employed in any California public school district within 39 months of the previous permanent status, or has been employed in a school district with an average daily attendance of not more than 250 for at least two years.

(2) The teacher completes 45 clock hours of staff development in methods of specially designed content instruction delivered in English prior to January 1, 2008. The extension of the date by which a teacher is required to complete this staff development may not be construed as authorizing teachers to teach limited-English-proficient pupils without a certificate issued pursuant to this section or Sections 44253.3 and 44253.4.

(b) The commission, in consultation with the Superintendent of Public Instruction, shall establish guidelines for the provision of staff development pursuant to this section. The commission and the superintendent shall use their best efforts to establish these guidelines as soon as possible, but in no event later than January 1, 1996. Staff development pursuant to this section shall be consistent with the commission's guidelines.

(1) To ensure the highest standards of program quality and effectiveness, the guidelines shall include quality standards for the persons who train others to perform staff development training and for those who provide the training. The guidelines may require that teachers who qualify to provide instruction pursuant to paragraph (1) of subdivision (d) include a portion, within the total 45 clock hours of training provided in paragraph (2) of subdivision (a), in English language development.

(2) The guidelines for training to meet the requirements of paragraph (1) of subdivision (d) may provide for 20 hours, or fewer hours as the commission may specify, of training in any aspect of English language development or specially designed content instruction delivered in English.

(3) The guidelines shall require that the staff development offered pursuant to this section be aligned to the teacher preparation leading to the issuance of a certificate pursuant to Section 44253.3 and any amendments made to that section. This alignment, however, may not result in any increase in the number of hours of staff development necessary to meet the requirements of this section.

(4) The guidelines and standards established by the commission to implement this section shall require and maintain compliance with any requirements mandated by federal law for purposes of assuring continued federal financial assistance.

(5) The commission shall review staff development programs in relation to the guidelines and standards established pursuant to this section. The review shall include all programs offered pursuant to this section except programs previously approved pursuant to subdivision (c). If the commission finds that a program meets the applicable guidelines and standards, the commission shall forward a report of its findings to the chief executive officer of the sponsoring school district,

county office of education, or regionally accredited college or university. If the commission finds that a program does not meet the applicable guidelines or standards, or both, the report of the commission shall specify the areas of noncompliance and the time period in which a second review shall occur. If a second review of a program by the commission reveals a pattern of continued noncompliance with the applicable guidelines or standards, or both, the sponsoring agency shall not offer the program to teachers who have not already enrolled in it. The effective date for California Commission on Teacher Credentialing approval of staff development programs not currently approved as of January 1, 2000, shall be on or before January 1, 2002, except for persons already enrolled in programs by January 1, 2002.

(6) By December 4, 2007, the commission shall report to the Legislature on the status of the 45-hour and the 90-hour alternative programs, including the strengths and weaknesses of the process and programs. In preparing the report, the commission shall include a summary of its review pursuant to paragraph (5) of the staff development programs.

(c) The staff development may be sponsored by any school district, county office of education, or regionally accredited college or university that meets the standards included in the guidelines established pursuant to this subdivision or any organization that meets those standards and is approved by the commission. Any equivalent three semester unit or four quarter unit class may be taken by the teacher at a regionally accredited college or university to satisfy the staff development requirement described in either subdivision (a) or (d), or both. Once the commission has made a determination that a college or university class is equivalent, no further review of the class shall be required pursuant to paragraph (5) of subdivision (b), regardless of the date of the initial review.

(d) (1) A teacher who completes the staff development described in subdivision (a) shall be awarded a certificate of completion of staff development in methods of specially designed content instruction delivered in English.

(2) A teacher who completes the staff development described in subdivision (a) may provide specially designed content instruction delivered in English, as defined in subdivision (b) of Section 44253.2, and instruction for English language development, as defined in subdivision (a) of Section 44253.2, in any departmentalized teaching assignment consistent with the authorization of the teacher's basic credential. This authorization also applies to teachers who completed the required staff development before the effective date of the amendments made to this section by the act adding this authorization.

(3) A teacher who completes the staff development described in subdivision (a) may not be assigned to provide content instruction

delivered in the pupil's primary language, as defined in subdivision (c) of Section 44253.2.

(4) A teacher who completes the staff development described in subdivision (a) may be assigned to provide instruction for English language development, as defined in subdivision (a) of Section 44253.2, in a self-contained classroom under either of the following circumstances:

(A) The teacher has taught for at least nine years in California public schools, certifies that he or she has had experience or training in teaching limited-English-proficient pupils, and authorizes verification by the entity that issues the certificate of completion. The teacher shall be awarded a certificate of completion in methods of instruction for English language development in a self-contained classroom.

(B) The teacher has taught for less than nine years in California public schools, or has taught for at least nine years in California public schools but is unable to certify that he or she has had experience or training in teaching limited-English-proficient pupils, but has, within three years of completing the staff development described in subdivision (a), completed an additional 45 hours of staff development, including specially designed content instruction delivered in English and English language development training, as set forth in the guidelines developed pursuant to subdivision (b). Upon completion of this additional staff development, the teacher shall be awarded a certificate of completion in methods of instruction for English language development in a self-contained classroom.

(e) During the period in which a teacher is pursuing the training specified in paragraph (2) of subdivision (a) or subdivision (d), or both, including the period for the assessment and awarding of the certificate, the teacher may be provisionally assigned to provide instruction for English language development, as defined in subdivision (a) of Section 44253.2, or to provide specially designed content instruction delivered in English, as defined in subdivision (b) of Section 44253.2.

(f) (1) A teacher who completes the staff development with any provider specified in subdivision (c), and who meets the requirements of subdivision (a) or (d) for a certificate of completion of staff development in methods of specially designed content instruction delivered in English or English language development in a self-contained classroom, or both, shall be issued the certificate or certificates.

(2) A teacher who completes a staff development program in methods of specially designed content instruction delivered in English or English language development in a self-contained classroom, or both, who has been determined by the commission to meet the applicable guidelines and standards, pursuant to paragraph (5) of subdivision (b), shall receive

a certificate or certificates of completion from the commission upon submitting an application, a staff development verification form to be furnished by the commission, and payment of a fee to be set by the commission, not to exceed forty-five dollars ($45).

(3) A person who is enrolled in, or who has completed a staff development program not approved by the commission prior to January 1, 2002, may, until the date of January 1, 2003, apply to any of the following agencies for the certificate or certificates, but the teacher shall be issued the certificate or certificates by only one of these agencies:

(A) The school district in which the teacher is a permanent employee.

(B) The county office of education in the county in which the teacher is an employee for an agency specified in paragraph (1) of subdivision (a).

(C) Any school district or county office of education that provides staff development pursuant to subdivision (c). Before issuing a certificate or certificates based on an equivalent class or classes, as provided for in subdivision (c), the issuing agency shall determine if the class or classes meet the guidelines established pursuant to subdivision (b).

(4) Any school district or county office of education that issues a certificate of completion shall forward a copy of the certificate to the Commission on Teacher Credentialing within 90 days of issuing the certificate.

(5) An agency that issues a certificate or certificates of completion may charge the teacher requesting the certificate or certificates of completion a fee that will cover the actual costs of the agency in issuing, forwarding a copy to the commission, and paying any fee charged by the commission for receiving and servicing, the certificate or certificates of completion.

The commission may charge the agency that forwards a copy of a certificate or certificates of completion a one-time fee to cover the actual costs to the commission to file the copy or copies, and to issue duplicates when requested by the teacher. The fee shall not exceed an amount equal to one-half the fee the commission charges for issuing a credential.

(g) The certificate of completion is valid in all California public schools. A teacher who has been issued a certificate of completion may be assigned indefinitely to provide the instructional services named on the certificate in any school district, county office of education, or school administered under the authority of the Superintendent of Public Instruction.

(h) Teacher assignments made in accordance with subdivision (a) of this section shall be included in the reports required by subdivisions (a) and (e) of Section 44258.9.

(i) The governing board of each school district shall make reasonable efforts to provide limited-English-proficient pupils in need of English language development instruction with teachers who hold appropriate credentials, language development specialist certificates, or cross-cultural language and academic development certificates that authorize English language development instruction. However, any teacher awarded a certificate or certificates of completion shall be deemed certificated and competent to provide the services listed on that certificate of completion. A teacher who completes staff development pursuant to this section may use those hours of staff development to meet the requirements of subdivision (b) of Section 44277.

(j) Any teacher completing staff development pursuant to this section shall be credited with three semester units or four quarter units for each block of 45 hours of staff development completed for the purpose of meeting the requirements set forth in subdivision (b) of Section 44253.3.

(k) Any school district may use funds allocated to it for the purposes of Chapter 3.1 (commencing with Section 44681) to provide staff development pursuant to this section.

CHAPTER 170

An act to amend and repeal Section 6723 of the Food and Agricultural Code, relating to nursery stock, and making an appropriation therefor.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 6723 of the Food and Agricultural Code, as amended by Section 1 of Chapter 450 of the Statutes of 1999, is amended to read:

6723. (a) The secretary shall establish the minimum license fee at an amount not to exceed one hundred eighty dollars ($180).

(b) The secretary may fix the minimum license fee at an amount that is less than one hundred eighty dollars ($180) and may adjust the license fee if, after investigation and due notice, the secretary finds that the cost of administering this division and Chapter 5 (commencing with Section 53301) of Division 18, which relate to nursery stock, can be defrayed from revenues derived from the license fee in combination with those sums as provided by Sections 435 and 5822.

(c) Both of the following amounts shall be added as an additional license fee to the license fee established pursuant to subdivisions (a) and (b):

(1) An equal sum for each branch salesyard, store, or sales location that is owned and operated by the applicant in the state.

(2) (A) An acreage fee in an amount to be established by the secretary for land used in the production, storage, or sale of all nursery stock, except as provided in subparagraph (B), in excess of one acre, which the secretary determines is necessary to carry out this part and any portion of this code that relates to nursery stock. The total acreage fee shall not be less than twenty-five dollars ($25) nor more than nine hundred dollars ($900) for each licensee. The acreage fee shall be calculated using as a basis the total of the acreage at all locations where nursery stock is produced, stored, or sold.

(B) Subparagraph (A) does not apply to those licensees whose gross income from the production of cut flowers and cut ornamentals is 75 percent or greater of the gross income of their nursery.

(d) As to all the fees, the secretary may require payment of prorated amounts when necessary in the issuance of new licenses for branch salesyards, stores, or sales locations to persons already licensed pursuant to the licensing periods established in Section 6724.

SEC. 2. Section 6723 of the Food and Agricultural Code, as added by Section 2 of Chapter 450 of the Statutes of 1999, is repealed.

CHAPTER 171

An act to amend Sections 116.410, 411.20, 1005, 2024, and 2034 of, and to add Section 2016.060 to, the Code of Civil Procedure, relating to procedure.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 116.410 of the Code of Civil Procedure is amended to read:

116.410. (a) Any person who is at least 18 years of age, or legally emancipated, and mentally competent may be a party to a small claims action.

(b) A minor or incompetent person may appear by a guardian ad litem appointed by a judge of the court in which the action is filed.

SEC. 2. Section 411.20 of the Code of Civil Procedure is amended to read:

411.20. (a) If the clerk accepts for filing a complaint or other first paper, or any subsequent filing, and payment is made by check which is later returned without payment, the clerk shall, by mail, notify the party who tendered the check that he or she has 20 days from the date of mailing of the notice within which to pay the fee, except as provided in subdivision (d), either by cash or by certified check. If a complaint or other first paper, or any subsequent filing, is accompanied by payment in an amount less than the required fee, the clerk shall accept the paper for filing and, by mail, notify the party tendering the check that he or she has 20 days from the date of mailing of the notice within which to pay the amount due, except as provided in subdivision (d). If the person who tendered the check is not a party to the action or proposed action, but only is acting on behalf of a party, the clerk shall notify not only the person who tendered the check, but also the party or that party's attorney if the party is represented. The clerk's certificate as to the mailing of notice pursuant to this section establishes a rebuttable presumption that the fees were not paid. This presumption is a presumption affecting the burden of producing evidence.

(b) The clerk shall void the filing if the party who tendered a returned check or on whose behalf a returned check was tendered, or the party who paid less than the required fee or on whose behalf the fee was paid, has not paid the fee either by cash or certified check within 20 days of the date on which the notice required by subdivision (a) was mailed. Any filing voided by this section can be disposed of without microfilming immediately after the 20 days have elapsed.

(c) If an adverse party files a pleading in response to a complaint, paper or filing referred to in subdivision (a), together with a filing fee, and the original filing is voided pursuant to subdivision (b), the adverse party's filing is not required, and the adverse party's filing fee shall be refunded upon request. If an adverse party tenders a check that is returned without payment, the procedures in subdivisions (a) and (b) shall apply.

(d) If any trial or other hearing is scheduled to be heard prior to the expiration of the 20-day period provided for in subdivision (a), the fee shall be paid prior to the trial or hearing. Failure of the party to pay the fee prior to the trial or hearing date shall cause the court to void the filing and proceed as if it had not been filed.

(e) If the clerk performs a service or issues any document for which a fee is required and payment is made by check which is later returned without payment, or if payment is in an amount less than the required fee, the court may order further proceedings suspended as to the party for whom the check was tendered. If the court so orders, the clerk shall, by mail, notify the party who tendered the check that proceedings have been

suspended until the receipt of payment of the required fee either by cash or by certified check. If the person who tendered the check is not a party to the action or proposed action, but only is acting on behalf of a party, the clerk shall notify not only the person who tendered the check, but also the party or that party's attorney if the party is represented. The clerk's certificate as to the mailing of notice pursuant to this section establishes a rebuttable presumption that the fees were not paid. This presumption is a presumption affecting the burden of producing evidence.

SEC. 3. Section 1005 of the Code of Civil Procedure is amended to read:

1005. (a) Written notice shall be given, as prescribed in subdivisions (b) and (c), for the following motions:

(1) Notice of Application and Hearing for Writ of Attachment under Section 484.040.

(2) Notice of Application and Hearing for Claim and Delivery under Section 512.030.

(3) Notice of Hearing for Claim of Exemption under Section 706.105.

(4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.

(5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6.

(6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.

(7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.

(8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to paragraph (3) of subdivision (e) of Section 2025.

(9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.

(10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.

(11) Motion to Expunge Notice of Pendency of Action pursuant to Section 405.30.

(12) Motion to Set Aside Default and for Leave to Amend pursuant to Section 585.5.

(13) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, if the notice is served by mail, the required 16-day period of notice before the

hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 16-day period of notice before the hearing shall be increased by two calendar days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing.

The court, or a judge thereof, may prescribe a shorter time.

(c) Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed. This subdivision applies to the service of opposition and reply papers regarding motions for summary judgment or summary adjudication, in addition to the motions listed in subdivision (a).

The court, or a judge thereof, may prescribe a shorter time.

SEC. 4. Section 2016.060 is added to the Code of Civil Procedure, to read:

2016.060. When the last day to perform or complete any act provided for in this title falls on a Saturday, Sunday, or holiday as specified in Section 10, the time limit is extended until the next court day closer to the trial date.

SEC. 5. Section 2024 of the Code of Civil Procedure is amended to read:

2024. (a) Except as otherwise provided in this section, any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action. If either of these dates falls on a Saturday, Sunday, or holiday as specified in Section 10, the last day shall be the next court day closer to the trial date. As used in this section, discovery is considered completed on the day a response is due or on the day a deposition begins. Except as provided in subdivision (e), a continuance or postponement of the trial date does not operate to reopen discovery proceedings.

(b) The time limit on completing discovery in an action to be arbitrated under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 is subject to Judicial Council Rule. After an award in a case ordered to judicial arbitration, completion of discovery is limited by Section 1141.24.

(c) This section does not apply to (1) summary proceedings for obtaining possession of real property governed by Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, in which discovery shall be completed on or before the fifth day before the date set for trial except as provided in subdivisions (e) and (f), or (2) eminent domain proceedings governed by Title 7 (commencing with Section 1230.010) of Part 3.

(d) Any party shall be entitled as a matter of right to complete discovery proceedings pertaining to a witness identified under Section 2034 on or before the 15th day, and to have motions concerning that discovery heard on or before the 10th day, before the date initially set for the trial of the action. If either of these days falls on a Saturday, a Sunday, or a holiday as specified in Section 10, the last day shall be the next court day closer to the trial date.

(e) On motion of any party, the court may grant leave to complete discovery proceedings, or to have a motion concerning discovery heard, closer to the initial trial date, or to reopen discovery after a new trial date has been set. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any matter relevant to the leave requested, including, but not limited to, the following:

(1) The necessity and the reasons for the discovery.

(2) The diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier.

(3) Any likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party.

(4) The length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to extend or to reopen discovery, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) Parties to the action may, with the consent of any party affected by it, enter into an agreement to extend the time for the completion of discovery proceedings or for the hearing of motions concerning discovery, or to reopen discovery after a new date for trial of the action has been set. This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date. In no event shall this agreement require a court to grant a continuance or postponement of the trial of the action.

(g) When the last day to perform or complete any act provided for in this article falls on a Saturday, Sunday, or holiday as specified in Section 10, the time limit is extended until the next court day closer to the trial date.

SEC. 6. Section 2034 of the Code of Civil Procedure is amended to read:

2034. (a) After the setting of the initial trial date for the action, any party may obtain discovery by demanding that all parties simultaneously exchange information concerning each other's expert trial witnesses to the following extent:

(1) Any party may demand a mutual and simultaneous exchange by all parties of a list containing the name and address of any natural person, including one who is a party, whose oral or deposition testimony in the form of an expert opinion any party expects to offer in evidence at the trial.

(2) If any expert designated by a party under paragraph (1) is a party or an employee of a party, or has been retained by a party for the purpose of forming and expressing an opinion in anticipation of the litigation or in preparation for the trial of the action, the designation of that witness shall include or be accompanied by an expert witness declaration under paragraph (2) of subdivision (f).

(3) Any party may also include a demand for the mutual and simultaneous production for inspection and copying of all discoverable reports and writings, if any, made by any expert described in paragraph (2) in the course of preparing that expert's opinion.

This section does not apply to exchanges of lists of experts and valuation data in eminent domain proceedings under Chapter 7 (commencing with Section 1258.010) of Title 7 of Part 3.

(b) Any party may make a demand for an exchange of information concerning expert trial witnesses without leave of court. A party shall make this demand no later than the 10th day after the initial trial date has been set, or 70 days before that trial date, whichever is closer to the trial date. If this day falls on a Saturday, a Sunday, or a holiday as specified in Section 10, the last day shall be the next court day closer to the trial date.

(c) A demand for an exchange of information concerning expert trial witnesses shall be in writing and shall identify, below the title of the case, the party making the demand. The demand shall state that it is being made under this section.

The demand shall specify the date for the exchange of lists of expert trial witnesses, expert witness declarations, and any demanded production of writings. The specified date of exchange shall be 50 days before the initial trial date, or 20 days after service of the demand, whichever is closer to the trial date, unless the court, on motion and a showing of good cause, orders an earlier or later date of exchange. If this day falls on a Saturday, a Sunday, or a holiday as specified in Section 10, the last day shall be the next court day closer to the trial date.

(d) The party demanding an exchange of information concerning expert trial witnesses shall serve the demand on all parties who have appeared in the action.

(e) A party who has been served with a demand to exchange information concerning expert trial witnesses may promptly move for a protective order. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense. The protective order may include, but is not limited to, one or more of the following directions:

(1) That the demand be quashed because it was not timely served.

(2) That the date of exchange be earlier or later than that specified in the demand.

(3) That the exchange be made only on specified terms and conditions.

(4) That the production and exchange of any reports and writings of experts be made at a different place or at a different time than specified in the demand.

(5) That some or all of the parties be divided into sides on the basis of their identity of interest in the issues in the action, and that the designation of any experts as described in paragraph (2) of subdivision (a) be made by any side so created.

(6) That a party or a side reduce the list of employed or retained experts designated by that party or side under paragraph (2) of subdivision (a).

If the motion for a protective order is denied in whole or in part, the court may order that the parties against whom the motion is brought, provide or permit the discovery against which the protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) All parties who have appeared in the action shall exchange information concerning expert witnesses in writing on or before the date of exchange specified in the demand. The exchange of information may occur at a meeting of the attorneys for the parties involved or by a mailing on or before the date of exchange.

(1) The exchange of expert witness information shall include either of the following:

(A) A list setting forth the name and address of any person whose expert opinion that party expects to offer in evidence at the trial.

(B) A statement that the party does not presently intend to offer the testimony of any expert witness.

(2) If any witness on the list is an expert as described in paragraph (2) of subdivision (a), the exchange shall also include or be accompanied by an expert witness declaration signed only by the attorney for the party designating the expert, or by that party if that party has no attorney. This declaration shall be under penalty of perjury and shall contain:

(A) A brief narrative statement of the qualifications of each expert.

(B) A brief narrative statement of the general substance of the testimony that the expert is expected to give.

(C) A representation that the expert has agreed to testify at the trial.

(D) A representation that the expert will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the specific testimony, including any opinion and its basis, that the expert is expected to give at trial.

(E) A statement of the expert's hourly and daily fee for providing deposition testimony and for consulting with the retaining attorney.

(g) If a demand for an exchange of information concerning expert trial witnesses includes a demand for production of reports and writings as described in paragraph (3) of subdivision (a), all parties shall produce and exchange, at the place and on the date specified in the demand, all discoverable reports and writings, if any, made by any designated expert described in paragraph (2) of subdivision (a).

(h) Within 20 days after the exchange described in subdivision (f), any party who engaged in the exchange may submit a supplemental expert witness list containing the name and address of any experts who will express an opinion on a subject to be covered by an expert designated by an adverse party to the exchange, if the party supplementing an expert witness list has not previously retained an expert to testify on that subject. This supplemental list shall be

accompanied by an expert witness declaration under paragraph (2) of subdivision (f) concerning those additional experts, and by all discoverable reports and writings, if any, made by those additional experts. The party shall also make those experts available immediately for a deposition under subdivision (i), which deposition may be taken even though the time limit for discovery under Section 2024 has expired.

(i) On receipt of an expert witness list from a party, any other party may take the deposition of any person on the list. The procedures for taking oral and written depositions set forth in Sections 2025, 2026, 2027, and 2028 apply to a deposition of a listed trial expert witness except as follows:

(1) The deposition of any expert described in paragraph (2) of subdivision (a) shall be taken at a place that is within 75 miles of the courthouse where the action is pending. However, on motion for a protective order by the party designating an expert witness, and on a showing of exceptional hardship, the court may order that the deposition be taken at a more distant place from the courthouse.

(2) A party desiring to depose any expert witness, other than a party or employee of a party, who is either (A) an expert described in paragraph (2) of subdivision (a) except one who is a party or an employee of a party, (B) a treating physician and surgeon or other treating health care practitioner who is to be asked during the deposition to express opinion testimony, including opinion or factual testimony regarding the past or present diagnosis or prognosis made by the practitioner or the reasons for a particular treatment decision made by the practitioner, but not including testimony requiring only the reading of words and symbols contained in the relevant medical record or, if those words and symbols are not legible to the deponent, the approximation by the deponent of what those words or symbols are, or (C) an architect, professional engineer, or licensed land surveyor, who was involved with the original project design or survey for which he or she is asked to express an opinion within his or her expertise and relevant to the action or proceeding, shall pay the expert's reasonable and customary hourly or daily fee for any time spent at the deposition from the time noticed in the deposition subpoena or from the time of the arrival of the expert witness should that time be later than the time noticed in the deposition subpoena, until the time the expert witness is dismissed from the deposition, whether or not the expert is actually deposed by any party attending the deposition. If any counsel representing the expert or a nonnoticing party is late to the deposition, the expert's reasonable and customary hourly or daily fee for the time period determined from the time noticed in the deposition subpoena until the counsel's late arrival, shall be paid by that tardy counsel. However, the hourly or daily fee shall not exceed the fee charged the party who retained the expert except

where the expert donated his or her services to a charitable or other nonprofit organization. A daily fee shall only be charged for a full day of attendance at a deposition or where the expert was required by the deposing party to be available for a full day and the expert necessarily had to forego all business he or she would have otherwise conducted that day but for the request that he or she be available all day for the scheduled deposition. In a worker's compensation case arising under Division 4 (commencing with Section 3201) or Division 4.5 (commencing with Section 6100) of the Labor Code, a party desiring to depose any expert on another party's expert witness list shall pay this fee.

The party taking the deposition shall either accompany the service of the deposition notice with a tender of the expert's fee based on the anticipated length of the deposition or tender that fee at the commencement of the deposition. The expert's fee shall be delivered to the attorney for the party designating the expert. If the deposition of the expert takes longer than anticipated, the party giving notice of the deposition shall pay the balance of the expert's fee within five days of receipt of an itemized statement from the expert. The party designating the expert is responsible for any fee charged by the expert for preparing for the deposition and for traveling to the place of the deposition, as well as for any travel expenses of the expert.

(3) The service of a proper deposition notice accompanied by the tender of the expert witness fee described in paragraph (2) is effective to require the party employing or retaining the expert to produce the expert for the deposition. If the party noticing the deposition fails to tender the expert's fee under paragraph (2), the expert shall not be deposed at that time unless the parties stipulate otherwise.

(4) If a party desiring to take the deposition of an expert witness under this subdivision deems that the hourly or daily fee of that expert for providing deposition testimony is unreasonable, that party may move for an order setting the compensation of that expert. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall also be given to the expert. In any such attempt at an informal resolution, either the party or the expert shall provide the other with (A) proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation, (B) the total number of times the presently demanded fee has ever been charged and received by that expert, and (C) the frequency and regularity with which the presently demanded fee has been charged and received by that expert within the two-year period preceding the hearing on the motion.

In addition to any other facts or evidence, the expert or the party designating the expert shall provide, and the court's determination as to

the reasonableness of the fee shall be based upon (A) proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation, (B) the total number of times the presently demanded fee has ever been charged and received by that expert, and (C) the frequency and regularity with which the presently demanded fee has been charged and received by that expert within the two-year period preceding the hearing on the motion. Provisions (B) and (C) shall apply to actions filed after January 1, 1994. The court may also consider the ordinary and customary fees charged by similar experts for similar services within the relevant community and any other factors the court deems necessary or appropriate to make its determination.

Upon a determination that the fee demanded by that expert is unreasonable, and based upon the evidence and factors considered, the court shall set the fee of the expert providing testimony.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to set the expert witness fee, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) Except as provided in subdivisions (k), (*l*), and (m), on objection of any party who has made a complete and timely compliance with subdivision (f), the trial court shall exclude from evidence the expert opinion of any witness that is offered by any party who has unreasonably failed to do any of the following:

(1) List that witness as an expert under subdivision (f).

(2) Submit an expert witness declaration.

(3) Produce reports and writings of expert witnesses under subdivision (g).

(4) Make that expert available for a deposition under subdivision (i).

(k) On motion of any party who has engaged in a timely exchange of expert witness information, the court may grant leave to (1) augment that party's expert witness list and declaration by adding the name and address of any expert witness whom that party has subsequently retained, or (2) amend that party's expert witness declaration with respect to the general substance of the testimony that an expert previously designated is expected to give. This motion shall be made at a sufficient time in advance of the time limit for the completion of discovery under Section 2024 to permit the deposition of any expert to whom the motion relates to be taken within that time limit. However, under exceptional circumstances, the court may permit the motion to be made at a later time. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The demand, and all

expert witness lists and declarations exchanged in response to it, shall be lodged with the court when their contents become relevant to an issue in any pending matter in the action. The court shall grant leave to augment or amend an expert witness list or declaration only after taking into account the extent to which the opposing party has relied on the list of expert witnesses, and after determining that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits, and that the moving party either (1) would not in the exercise of reasonable diligence have determined to call that expert witness or have decided to offer the different or additional testimony of that expert witness, or (2) failed to determine to call that expert witness, or to offer the different or additional testimony of that expert witness as a result of mistake, inadvertence, surprise, or excusable neglect, provided that the moving party (1) has sought leave to augment or amend promptly after deciding to call the expert witness or to offer the different or additional testimony, and (2) has promptly thereafter served a copy of the proposed expert witness information concerning the expert or the testimony described in subdivision (f) on all other parties who have appeared in the action. Leave shall be conditioned on the moving party making the expert available immediately for a deposition under subdivision (i), and on such other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to augment or amend expert witness information, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances made the imposition of the sanction unjust.

(*l*) On motion of any party who has failed to submit expert witness information on the date specified in a demand for that exchange, the court may grant leave to submit that information on a later date. This motion shall be made a sufficient time in advance of the time limit for the completion of discovery under Section 2024 to permit the deposition of any expert to whom the motion relates to be taken within that time limit. However, under exceptional circumstances, the court may permit the motion to be made at a later time. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court shall grant leave to submit tardy expert witness information only after taking into account the extent to which the opposing party has

relied on the absence of a list of expert witnesses, and determining that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits, and that the moving party (1) failed to submit that information as the result of mistake, inadvertence, surprise, or excusable neglect, (2) sought that leave promptly after learning of the mistake, inadvertence, surprise, or excusable neglect, and (3) has promptly thereafter served a copy of the proposed expert witness information described in subdivision (f) on all other parties who have appeared in the action. This order shall be conditioned on the moving party making that expert available immediately for a deposition under subdivision (i), and on such other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to submit tardy expert witness information, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(m) A party may call as a witness at trial an expert not previously designated by that party if: (1) that expert has been designated by another party and has thereafter been deposed under subdivision (i), or (2) that expert is called as a witness to impeach the testimony of an expert witness offered by any other party at the trial. This impeachment may include testimony to the falsity or nonexistence of any fact used as the foundation for any opinion by any other party's expert witness, but may not include testimony that contradicts the opinion.

(n) The demand for an exchange of information concerning expert trial witnesses, and any expert witness lists and declarations exchanged shall not be filed with the court. The party demanding the exchange shall retain both the original of the demand, with the original proof of service affixed, and the original of all expert witness lists and declarations exchanged in response to the demand until six months after final disposition of the action. At that time, all originals may be destroyed unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

SEC. 7. Section 4 of this bill incorporates the substance of changes to the Civil Discovery Act proposed by this bill and AB 3081. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill affects provisions of the Civil Discovery Act, and (3) this bill is enacted after AB 3081, in which case

Sections 2024 and 2034 of the Code of Civil Procedure, as amended by this bill, shall remain operative only until the operative date of AB 3081, at which time Section 4 of this bill shall become operative, and Sections 5 and 6 of this bill shall cease to be operative.

CHAPTER 172

An act to amend Sections 2854 and 15702 of, and to repeal Section 15603 of, the Fish and Game Code, relating to fish and game.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 2854 of the Fish and Game Code is amended to read:

2854. The workgroup shall, after appropriate consultation with members of the public, determine future actions for implementing the recommendations of its final report.

SEC. 2. Section 15603 of the Fish and Game Code is repealed.

SEC. 3. Section 15702 of the Fish and Game Code is amended to read:

15702. (a) The committee shall be advisory to the director on all matters pertaining to aquaculture and shall coordinate activities among public entities.

(b) The committee shall assist the director in developing and implementing a state aquaculture plan, identify the opportunities for regulatory relief, assist in development of research and development priorities, assist in the development of criteria to assure that publicly financed pilot programs are compatible with industry needs, and identify other opportunities for industrial development.

CHAPTER 173

An act to add Section 2715.5 to the Public Resources Code, relating to surface mining.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 2715.5 is added to the Public Resources Code, to read:

2715.5. (a) The Cache Creek Resource Management Plan, in conjunction with a site specific plan deemed consistent by the lead agency with the Cache Creek Resource Management Plan, until December 31, 2008, shall be considered to be a functional equivalent of a reclamation plan for the purposes of this chapter. No other reclamation plan shall be required to be reviewed and approved for any excavation project subject to the Cache Creek Resource Management Plan that is conducted in conformance with an approved site specific plan that is consistent with the Cache Creek Resource Management Plan, and the standards specified in that plan governing erosion control, channel stabilization, habitat restoration, flood control, or infrastructure maintenance, if that plan is reviewed and approved by a lead agency pursuant to this chapter.

(b) For purposes of this section, the board of supervisors of the county in which the Cache Creek Resource Management Plan is to be implemented shall prepare and file the annual report required to be prepared pursuant to Section 2207.

(c) Nothing in this section precludes an enforcement action by the board or the department brought pursuant to this chapter or Section 2207 if the lead agency or the director determines that a surface mining operator, acting under the authority of the Cache Creek Resource Management Plan, is not in compliance with the requirements of this chapter or Section 2207.

(d) ''Site specific plan,'' for the purposes of this section, means an individual project plan approved by the lead agency that is consistent with the Cache Creek Resource Management Plan. Site specific plans prepared in conformance with the Cache Creek Resource Management Plan shall, at a minimum, include the information required pursuant to subdivision (c) of Section 2772, shall comply with the requirements of Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and shall be provided along with a financial assurance estimate to the department for review and comment pursuant to Section 2774. Notwithstanding the number of days authorized by paragraph (1) of subdivision (d) of Section 2774, the department shall review the site specific plan and the financial assurance estimate and prepare any written comments within 15 days from the date of receipt of the plan and the estimate.

(e) Prior to engaging in an excavation activity in conformance with the Cache Creek Resource Management Plan, a surface mining

operation shall be required to obtain financial assurances that meet the requirements of Section 2773.1.

(f) This section shall not become operative until the date the State Mining and Geology Board notifies the Secretary of State in writing that the board has approved an ordinance adopted by the Board of Supervisors for the County of Yolo that governs in-channel noncommercial extraction activities carried out pursuant to the Cache Creek Resources Management Plan.

(g) This section shall remain in effect only until December 31, 2008, and as of that date is repealed, unless a later enacted statute that is enacted before December 31, 2008, deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 174

An act to add Section 56525 to the Education Code, relating to special education.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 56525 is added to the Education Code, to read:

56525. (a) A person recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst qualifies as a behavioral intervention case manager of a district, special education local plan area, or county office and may conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs.

(b) This section does not require a district, special education local plan area, or county office to use a Board Certified Behavior Analyst as a behavioral intervention case manager.

CHAPTER 175

An act to amend Section 25150.6 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

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

SECTION 1. Section 25150.6 of the Health and Safety Code is amended to read:

25150.6. (a) Except as provided in subdivisions (e) and (f), the department, by regulation, may exempt a hazardous waste management activity from one or more of the requirements of this chapter, if the department does all of the following:

(1) Prepares an analysis of the hazardous waste management activity to which the exemption will apply pursuant to subdivision (b). The department shall first prepare the analysis as a preliminary analysis and make it available to the public at the same time that the department gives notice, pursuant to Section 11346.4 of the Government Code, that it proposes to adopt a regulation exempting the hazardous waste management activity from one or more of the requirements of this chapter. The department shall include, in the notice, a reference that the department has prepared a preliminary analysis and a statement concerning where a copy of the preliminary analysis can be obtained. The information in the preliminary analysis shall be updated and the department shall make the analysis available to the public as a final analysis not less than 10 working days prior to the date that the regulation is adopted.

(2) Demonstrates that one of the conclusions required by subdivision (c) is valid.

(3) Imposes, as may be necessary, conditions and limitations on the exemption that ensure that the exempted activity will not pose a significant potential hazard to human health or safety or to the environment.

(b) Before the department gives notice of a proposal to adopt a regulation exempting a hazardous waste management activity from one or more of the requirements of this chapter pursuant to subdivision (a), and before the department adopts the regulation, the department shall evaluate the hazardous waste management activity and prepare, as required by paragraph (1) of subdivision (a), an analysis that addresses all of the following aspects of the activity, to the extent that the requirement or requirements from which the activity will be exempted can affect these aspects of the activity:

(1) The types of hazardous waste streams and the estimated amounts of hazardous waste that are managed as part of the activity and the hazards to human health or safety or to the environment posed by reasonably foreseeable mismanagement of those hazardous wastes and their hazardous constituents. The estimate of the amounts of hazardous waste that are managed as part of the activity shall be based upon information reasonably available to the department.

(2) The complexity of the activity, and the amount and complexity of operator training, equipment installation and maintenance, and monitoring that are required to ensure that the activity is conducted in a manner that safely and effectively manages the particular hazardous waste stream.

(3) The chemical or physical hazards that are associated with the activity and the degree to which those hazards are similar to, or differ from, the chemical or physical hazards that are associated with the production processes that are carried out in the facilities that produce the hazardous waste that is managed as part of the activity.

(4) The types of accidents that might reasonably be foreseen to occur during the management of particular types of hazardous waste streams as part of the activity, the likely consequences of those accidents, and the actual reasonably available accident history associated with the activity.

(5) The types of locations at which the activity may be carried out, an estimate of the number of these locations, and the types of hazards that may be posed by proximity to the land uses described in subdivision (b) of Section 25232. The estimate of the number of locations at which the activity may be carried out shall be based upon information reasonably available to the department.

(c) The department shall not give notice proposing the adoption of, and the department may not adopt, a regulation pursuant to subdivision (a) unless it first demonstrates, using the information developed in the analysis prepared pursuant to subdivision (b), that one of the following is valid:

(1) The requirement from which the activity is exempted is not significant or important in either of the following:

(A) Preventing or mitigating potential hazards to human health or safety or to the environment posed by the activity.

(B) Ensuring that the activity is conducted in compliance with other applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(2) A requirement is imposed and enforced by another public agency that provides protection of human health and safety and the environment that is as effective as, and equivalent to, the protection provided by the requirement, or requirements, from which the activity is being exempted.

(3) Conditions or limitations imposed on the exemption will provide protection of human health and safety and the environment equivalent to the requirement, or requirements, from which the activity is exempted.

(4) Conditions or limitations imposed on the exemption accomplish the same regulatory purpose as the requirement, or requirements, from which the activity is being exempted but at less cost or greater administrative convenience and without increasing potential risks to human health or safety or to the environment.

(d) A regulation adopted pursuant to this section shall not be deemed to meet the standard of necessity, pursuant to Section 11349.1 of the Government Code, unless the department has complied with subdivisions (b) and (c).

(e) The department shall not exempt a hazardous waste management activity from a requirement of this chapter or the regulations adopted by the department if the requirement is also a requirement for that activity under the federal act.

(f) (1) On and after January 1, 2002, the department may, by regulation, exempt a hazardous waste management activity from one or more of the requirements of this chapter pursuant to this section only if the regulations govern the management of one of the hazardous wastes listed in subparagraphs (A) to (E), inclusive, of paragraph (2), the regulations identify the hazardous waste as a universal waste, and the regulations amend the standards for universal waste management set forth in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(2) The regulations that the department may adopt pursuant to paragraph (1) shall govern only the following types of hazardous waste:

(A) Electronic hazardous wastes, as the department may describe in the regulations adopted pursuant to this subdivision.

(B) Hazardous waste batteries.

(C) Hazardous wastes containing mercury.

(D) Hazardous waste lamps.

(E) Lead-based painted debris that is a hazardous waste.

(g) The authority of the department to adopt regulations pursuant to this section shall remain in effect only until January 1, 2008, unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date. This subdivision does not invalidate any regulation adopted pursuant to this section prior to the expiration of the department's authority.

SEC. 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 176

An act to amend Sections 253, 261, and 10000 of, to add Article 2 (commencing with Section 1520) to Chapter 12 of Division 1 of, and to repeal Section 1239 of, the Financial Code, relating to financial institutions.

[Approved by Governor July 19, 2004. Filed with Secretary of State July 19, 2004.]

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

SECTION 1. Section 253 of the Financial Code is amended to read:

253. (a) Whenever it is necessary for the commissioner to approve any instrument and to affix his or her official seal thereto, the commissioner shall charge a fee of twenty-five dollars ($25) therefor.

(b) Whenever it is proper for the department to furnish a copy of any paper that has been filed therein and to certify to the paper, the commissioner may charge twenty-five cents ($0.25) for each page copied.

(c) Whenever the commissioner is required or requested to certify copies of documents, the commissioner may charge a fee of twenty-five dollars ($25) for certifying the copied documents and for affixing his or her official seal.

SEC. 2. Section 261 of the Financial Code is amended to read:

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

(1) ''Control'' has the meaning set forth in subdivision (b) of Section 700. ''Control'' also means the ownership of a subject person by means of sole proprietorship, partnership, or by any other similar means.

(2) ''Controlling person'' means a person who, directly or indirectly, controls a subject person.

(3) ''Subject person'' means any of the following:

(A) A commercial bank, industrial bank, trust company, savings association, or credit union incorporated under the laws of this state.

(B) A person licensed by the commissioner under Chapter 14 (commencing with Section 1800) to receive money for transmission to foreign countries.

(C) A person authorized by the commissioner pursuant to Section 1803 to act as an agent of a person licensed by the commissioner to receive money for transmission to foreign countries.

(D) A person licensed by the commissioner pursuant to Division 7 (commencing with Section 18000) to transact business as a premium finance agency.

(E) A person licensed by the commissioner pursuant to Division 15 (commencing with Section 31000) to transact business as a business and industrial development corporation.

(F) A person licensed by the commissioner pursuant to Division 16 (commencing with Section 33000) to engage in the business of selling payment instruments in this state issued by the licensee.

(G) A corporation incorporated under the laws of this state for the purpose of engaging in, or that is authorized by the commissioner to engage in, business pursuant to Article 1 (commencing with Section 3500) of Chapter 19.

(H) A foreign corporation that is licensed by the commissioner pursuant to Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business pursuant to Article 1 (commencing with Section 3500) of Chapter 19.

(b) Notwithstanding any other provision of law, and subject to subdivision (c), the commissioner may deliver, or cause to be delivered, to local, state, or federal law enforcement agencies fingerprints taken of any of the following:

(1) An applicant for employment with the department.

(2) A person licensed, or proposed to be licensed, as a subject person.

(3) A director, officer, or employee of an existing or proposed subject person.

(4) An existing or proposed controlling person of a subject person.

(5) A director, officer, or employee of an existing or proposed controlling person of a subject person.

(6) A director, officer, or employee of an existing or proposed affiliate of a subject person.

(c) The authorization in subdivision (b) may only be used by the department for the purpose of obtaining information regarding an individual as to the existence and nature of the criminal record, if any, of that individual relating to convictions, and to any arrest for which the individual is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(d) No request shall be submitted pursuant to this section without the written consent of the person affected.

(e) Any criminal history information obtained pursuant to this section shall be confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 3. Section 1239 of the Financial Code is repealed.

SEC. 4. Article 2 (commencing with Section 1520) is added to Chapter 12 of Division 1 of the Financial Code, to read:

Article 2. Fiduciary Activities

1520. It is the intent of the Legislature that the provisions of this article, insofar as they are contained in the regulations regarding fiduciary activities of national banks (12 C.F.R. Sec. 9.1 and following) of the Office of the Comptroller of the Currency, conform, and be interpreted by anyone construing the provisions of this article to so conform, to those regulations, any rule or interpretation promulgated thereunder by the Office of the Comptroller of the Currency, and to any interpretation issued by an official or employee of the Office of Comptroller of the Currency duly authorized to issue the interpretation.

1521. As used in this article, the following terms have the following meanings:

(a) ''Bank'' means any of the following:

(1) A commercial bank, industrial bank, or trust company incorporated under the laws of this state.

(2) A foreign (other state) bank that may establish a branch office in this state in accordance with Article 2 (commencing with Section 3820) of Chapter 22 of Division 1.

(b) ''Fiduciary Regulations'' means the regulations regarding fiduciary activities of national banks promulgated by the Office of the Comptroller of the Currency (Part 9 (commencing with Section 9.1) of Title 12 of the Code of Federal Regulations) of the Office of the Comptroller of the Currency, as amended from time to time.

(c) All reference to the term ''national bank'' or ''national banks'' used in the Fiduciary Regulations shall mean ''bank'' or ''banks'' for purposes of this article.

1522. Sections 9.1 to 9.20, inclusive, of the Fiduciary Regulations in all of their particular, including footnotes, are hereby referred to, incorporated by reference into this article, and adopted.

SEC. 5. Section 10000 of the Financial Code is amended to read:

10000. Terms not expressly defined in this chapter have the meaning given in Chapter 1 (commencing with Section 5000) or as the commissioner may provide by regulation. For the purposes of this chapter:

(a) ''California savings association'' means either (1) an association or (2) a foreign association or successor thereof that was licensed to do the business of an association in California on September 15, 1935.

(b) ''Foreign holding company'' means a savings and loan holding company as defined in Section 10 of the Home Owners Loan Act, as amended (12 U.S.C. Sec. 1467a) or bank holding company as defined in Section 3 of the federal Bank Holding Company Act, as amended, (12 U.S.C. Sec. 1841 et seq.), which savings and loan or bank holding company (1) has its principal place of deposits outside of California and (2) does not control a subsidiary California savings association or a subsidiary federal association with, or a subsidiary foreign savings association with, an authorized home or branch office in California at which accounts may lawfully be opened and deposits may lawfully be accepted.

(c) ''Foreign savings association'' means an insured institution other than a California savings association and other than a federal association.

(d) ''Insured institution'' means an entity: (1) that is organized and licensed as a savings association, savings and loan association, or savings bank under the laws of another state of the United States and the deposits of which are insured by the Federal Deposit Insurance Corporation or (2) that is chartered by the Office of Thrift Supervision. However, ''insured institution'' does not include any savings bank of the type defined in Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(g)).

(e) The ''principal place of deposits'' of an entity is that state in which the total deposits of all of that entity's depository operations and those of its affiliates are largest.

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 177

An act to amend Sections 2924b, 2924h, 2924j, 2924*l*, 2934a, 2945, 2945.1, 2945.3, and 2945.4 of the Civil Code, relating to mortgages.

[Approved by Governor July 19, 2004. Filed with
Secretary of State July 20, 2004.]

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

SECTION 1. Section 2924b of the Civil Code is amended to read:

2924b. (a) Any person desiring a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale upon real property or an estate for years therein, as to which deed of trust or mortgage the power of sale cannot be exercised until these notices are given for the time and in the manner provided in Section 2924 may, at any time subsequent to recordation of the deed of trust or mortgage and prior to recordation of notice of default thereunder, cause to be filed for record in the office of the recorder of any county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of the notice of default and of sale. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof, and the book and page where the deed of trust or mortgage is recorded or the recorder's number, and shall be in substantially the following form:

"In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded _____, ____, in Book_____ page ____ records of ____ County, (or filed for record with recorder's serial number ____, _____ County) California, executed by ____ as trustor (or mortgagor) in which _____ is named as beneficiary (or mortgagee) and _____ as trustee be mailed to

_____ at _____.
Name Address

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature _____"

Upon the filing for record of the request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagor) recited therein and the names of persons requesting copies.

(b) The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do each of the following:

(1) Within 10 business days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an

envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(2) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(3) As used in paragraphs (1) and (2), the ''last known address'' of each trustor or mortgagor means the last business or residence address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. The beneficiary shall inform the trustee of the trustor's last address actually known by the beneficiary. However, the trustee shall incur no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

(4) A ''person authorized to record the notice of default or the notice of sale'' shall include an agent for the mortgagee or beneficiary, an agent of the named trustee, any person designated in an executed substitution of trustee, or an agent of that substituted trustee.

(c) The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do the following:

(1) Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof which is subject to the deed of trust or mortgage being foreclosed, and provided the instrument is recorded in the office of the county recorder so as to impart that constructive notice prior to the recording date of the notice of default and provided the instrument as so recorded sets forth a mailing address which the county recorder shall use, as instructed within the instrument, for the return of the instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

(2) The persons to whom notice shall be mailed under this subdivision are:

(A) The successor in interest, as of the recording date of the notice of default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.

(B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to the deed of trust or mortgage being foreclosed.

(C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B), as of the recording date of the notice of default.

(D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed which is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or statement of subordination to the deed of trust or mortgage being foreclosed.

(E) The successor in interest to the vendee or lessee described in subparagraph (D), as of the recording date of the notice of default.

(F) The Office of the Controller, Sacramento, California, where, as of the recording date of the notice of default, a ''Notice of Lien for Postponed Property Taxes'' has been recorded against the real property to which the notice of default applies.

(3) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and (2), and addressed to the office of any state taxing agency, Sacramento, California, which has recorded, subsequent to the deed of trust or mortgage being foreclosed, a notice of tax lien prior to the recording date of the notice of default against the real property to which the notice of default applies.

(4) Provide a copy of the notice of sale to the Internal Revenue Service, in accordance with Section 7425 of the Internal Revenue Code and any applicable federal regulation, if a ''Notice of Federal Tax Lien under Internal Revenue Laws'' has been recorded, subsequent to the deed of trust or mortgage being foreclosed, against the real property to which the notice of sale applies. The failure to provide the Internal Revenue Service with a copy of the notice of sale pursuant to this paragraph shall be sufficient cause to rescind the trustee's sale and

invalidate the trustee's deed, at the option of either the successful bidder at the trustee's sale or the trustee, and in either case with the consent of the beneficiary. Any option to rescind the trustee's sale pursuant to this paragraph shall be exercised prior to any transfer of the property by the successful bidder to a bona fide purchaser for value. A recision of the trustee's sale pursuant to this paragraph may be recorded in a notice of recision pursuant to Section 1058.5.

(5) The mailing of notices in the manner set forth in paragraph (1) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set forth any duty to communicate the notice to the entitled person from the fact that the mailing address used by the county recorder is the address of the attorney, agent, or employee.

(d) Any deed of trust or mortgage with power of sale hereafter executed upon real property or an estate for years therein may contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any person or party thereto at the address of the person given therein, and a copy of any notice of default and of any notice of sale shall be mailed to each of these at the same time and in the same manner required as though a separate request therefor had been filed by each of these persons as herein authorized. If any deed of trust or mortgage with power of sale executed after September 19, 1939, except a deed of trust or mortgage of any of the classes excepted from the provisions of Section 2924, does not contain a mailing address of the trustor or mortgagor therein named, and if no request for special notice by the trustor or mortgagor in substantially the form set forth in this section has subsequently been recorded, a copy of the notice of default shall be published once a week for at least four weeks in a newspaper of general circulation in the county in which the property is situated, the publication to commence within 10 business days after the filing of the notice of default. In lieu of publication, a copy of the notice of default may be delivered personally to the trustor or mortgagor within the 10 business days or at any time before publication is completed, or by posting the notice of default in a conspicuous place on the property and mailing the notice to the last known address of the trustor.

(e) Any person required to mail a copy of a notice of default or notice of sale to each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or certified mail shall simultaneously cause to be deposited in the United States mail, with postage prepaid and mailed by first-class mail, an envelope containing an additional copy of the required notice addressed to each trustor or mortgagor at the same address to which the notice is sent by registered or certified mail pursuant to subdivision (b) or (c). The person shall execute and retain an affidavit identifying the notice mailed, showing the name and residence or business address of

that person, that he or she is over the age of 18 years, the date of deposit in the mail, the name and address of the trustor or mortgagor to whom sent, and that the envelope was sealed and deposited in the mail with postage fully prepaid. In the absence of fraud, the affidavit required by this subdivision shall establish a conclusive presumption of mailing.

(f) No request for a copy of any notice filed for record pursuant to this section, no statement or allegation in the request, and no record thereof shall affect the title to real property or be deemed notice to any person that any person requesting copies of notice has or claims any right, title, or interest in, or lien or charge upon the property described in the deed of trust or mortgage referred to therein.

(g) ''Business day,'' as used in this section, has the meaning specified in Section 9.

SEC. 2. Section 2924h of the Civil Code is amended to read:

2924h. (a) Each and every bid made by a bidder at a trustee's sale under a power of sale contained in a deed of trust or mortgage shall be deemed to be an irrevocable offer by that bidder to purchase the property being sold by the trustee under the power of sale for the amount of the bid. Any second or subsequent bid by the same bidder or any other bidder for a higher amount shall be a cancellation of the prior bid.

(b) At the trustee's sale the trustee shall have the right (1) to require every bidder to show evidence of the bidder's ability to deposit with the trustee the full amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee prior to, and as a condition to, the recognizing of the bid, and to conditionally accept and hold these amounts for the duration of the sale, and (2) to require the last and highest bidder to deposit, if not deposited previously, the full amount of the bidder's final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, immediately prior to the completion of the sale, the completion of the sale being so announced by the fall of the hammer or in another customary manner. The present beneficiary of the deed of trust under foreclosure shall have the right to offset his or her bid or bids only to the extent of the total amount due the beneficiary including the trustee's fees and expenses.

(c) In the event the trustee accepts a check drawn by a credit union or a savings and loan association pursuant to this subdivision or a cash equivalent designated in the notice of sale, the trustee may withhold the issuance of the trustee's deed to the successful bidder submitting the check drawn by a state or federal credit union or savings and loan association or the cash equivalent until funds become available to the payee or endorsee as a matter of right.

For the purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid, and shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 15 calendar days after the sale, or the next business day following the 15th day if the county recorder in which the property is located is closed on the 15th day. However, the sale is subject to an automatic rescission for a failure of consideration in the event the funds are not ''available for withdrawal'' as defined in Section 12413.1 of the Insurance Code. The trustee shall send a notice of rescission for a failure of consideration to the last and highest bidder submitting the check or alternative instrument, if the address of the last and highest bidder is known to the trustee.

If a sale results in an automatic right of rescission for failure of consideration pursuant to this subdivision, the interest of any lienholder shall be reinstated in the same priority as if the previous sale had not occurred.

(d) If the trustee has not required the last and highest bidder to deposit the cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee in the manner set forth in paragraph (2) of subdivision (b), the trustee shall complete the sale. If the last and highest bidder then fails to deliver to the trustee, when demanded, the amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, that bidder shall be liable to the trustee for all damages which the trustee may sustain by the refusal to deliver to the trustee the amount of the final bid, including any court costs and reasonable attorneys' fees.

If the last and highest bidder willfully fails to deliver to the trustee the amount of his or her final bid in cash, a cashier's check drawn on a state

or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, or if the last and highest bidder cancels a cashiers check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent that has been designated in the notice of sale as acceptable to the trustee, that bidder shall be guilty of a misdemeanor punishable by a fine of not more than two thousand five hundred dollars ($2,500).

In the event the last and highest bidder cancels an instrument submitted to the trustee as a cash equivalent, the trustee shall provide a new notice of sale in the manner set forth in Section 2924f and shall be entitled to recover the costs of the new notice of sale as provided in Section 2924c.

(e) Any postponement or discontinuance of the sale proceedings shall be a cancellation of the last bid.

(f) In the event that this section conflicts with any other statute, then this section shall prevail.

(g) It shall be unlawful for any person, acting alone or in concert with others, (1) to offer to accept or accept from another, any consideration of any type not to bid, or (2) to fix or restrain bidding in any manner, at a sale of property conducted pursuant to a power of sale in a deed of trust or mortgage. However, it shall not be unlawful for any person, including a trustee, to state that a property subject to a recorded notice of default or subject to a sale conducted pursuant to this chapter is being sold in an ''as-is'' condition.

In addition to any other remedies, any person committing any act declared unlawful by this subdivision or any act which would operate as a fraud or deceit upon any beneficiary, trustor, or junior lienor shall, upon conviction, be fined not more than ten thousand dollars ($10,000) or imprisoned in the county jail for not more than one year, or be punished by both that fine and imprisonment.

SEC. 3. Section 2924j of the Civil Code is amended to read:

2924j. (a) Unless an interpleader action has been filed, within 30 days of the execution of the trustee's deed resulting from a sale in which there are proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k, the trustee shall send written notice to all persons with recorded interests in the real property as of the date immediately prior to the trustee's sale who would

be entitled to notice pursuant to subdivisions (b) and (c) of Section 2924b. The notice shall be sent by first-class mail in the manner provided in paragraph (1) of subdivision (c) of Section 2924b and inform each entitled person of each of the following:

(1) That there has been a trustee's sale of the described real property.

(2) That the noticed person may have a claim to all or a portion of the sale proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k.

(3) The noticed person may contact the trustee at the address provided in the notice to pursue any potential claim.

(4) That before the trustee can act, the noticed person may be required to present proof that the person holds the beneficial interest in the obligation and the security interest therefor. In the case of a promissory note secured by a deed of trust, proof that the person holds the beneficial interest may include the original promissory note and assignment of beneficial interests related thereto. The noticed person shall also submit a written claim to the trustee, executed under penalty of perjury, stating the following:

(A) The amount of the claim to the date of trustee's sale.

(B) An itemized statement of the principal, interest, and other charges.

(C) That claims must be received by the trustee at the address stated in the notice no later than 30 days after the date the trustee sends notice to the potential claimant.

(b) The trustee shall exercise due diligence to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds from those persons to whom notice was sent pursuant to subdivision (a). In the event there is no dispute as to the priority of the written claims submitted to the trustee, proceeds shall be paid within 30 days after the conclusion of the notice period. If the trustee has failed to determine the priority of written claims within 90 days following the 30-day notice period, then within 10 days thereafter the trustee shall deposit the funds with the clerk of the court pursuant to subdivision (c) or file an interpleader action pursuant to subdivision (e). Nothing in this section shall preclude any person from pursuing other remedies or claims as to surplus proceeds.

(c) If, after due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus of multiple persons or if the trustee determines there is a conflict between potential claimants, the trustee may file a declaration of the unresolved claims and deposit with the clerk of the superior court of the county in which the sale occurred, that portion of the sales proceeds that cannot be distributed, less any fees charged by the clerk pursuant to this subdivision. The declaration shall specify the date of the trustee's sale,

a description of the property, the names and addresses of all persons sent notice pursuant to subdivision (a), a statement that the trustee exercised due diligence pursuant to subdivision (b), that the trustee provided written notice as required by subdivisions (a) and (d) and the amount of the sales proceeds deposited by the trustee with the court. Further, the trustee shall submit a copy of the trustee's sales guarantee and any information relevant to the identity, location, and priority of the potential claimants with the court and shall file proof of service of the notice required by subdivision (d) on all persons described in subdivision (a).

The clerk shall deposit the amount with the county treasurer subject to order of the court upon the application of any interested party. The clerk may charge a reasonable fee for the performance of activities pursuant to this subdivision equal to the fee for filing an interpleader action pursuant to Article 2 (commencing with Section 26820) of Division 2 of Title 3 of the Government Code. Upon deposit of that portion of the sale proceeds that cannot be distributed by due diligence, the trustee shall be discharged of further responsibility for the disbursement of sale proceeds. A deposit with the clerk of the court pursuant to this subdivision may be either for the total proceeds of the trustee's sale, less any fees charged by the clerk, if a conflict or conflicts exist with respect to the total proceeds, or that portion that cannot be distributed after due diligence, less any fees charged by the clerk.

(d) Before the trustee deposits the funds with the clerk of the court pursuant to subdivision (c), the trustee shall send written notice by first-class mail, postage prepaid, to all persons described in subdivision (a) informing them that the trustee intends to deposit the funds with the clerk of the court and that a claim for the funds must be filed with the court within 30 days from the date of the notice, providing the address of the court in which the funds were deposited, and a telephone number for obtaining further information.

Within 90 days after deposit with the clerk, the court shall consider all claims filed at least 15 days before the date on which the hearing is scheduled by the court, the clerk shall serve written notice of the hearing by first-class mail on all claimants identified in the trustee's declaration at the addresses specified therein. Where the amount of the deposit is twenty-five thousand dollars ($25,000) or less, a proceeding pursuant to this section is a limited civil case. The court shall distribute the deposited funds to any and all claimants entitled thereto.

(e) Nothing in this section restricts the ability of a trustee to file an interpleader action in order to resolve a dispute about the proceeds of a trustee's sale. Once an interpleader action has been filed, thereafter the provisions of this section do not apply.

(f) ''Due diligence,'' for the purposes of this section means that the trustee researched the written claims submitted or other evidence of

conflicts and determined that a conflict of priorities exists between two or more claimants which the trustee is unable to resolve.

(g) To the extent required by the Unclaimed Property Law, a trustee in possession of surplus proceeds not required to be deposited with the court pursuant to subdivision (b) shall comply with the Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure).

(h) The trustee, beneficiary, or counsel to the trustee or beneficiary, is not liable for providing to any person who is entitled to notice pursuant to this section, information set forth in, or a copy of, subdivision (h) of Section 2945.3.

(i) Prior to July 1, 2000, the Judicial Council shall adopt a form to accomplish the filing authorized by this section.

SEC. 4. Section 2924*l* of the Civil Code is amended to read:

2924*l*. (a) In the event that a trustee under a deed of trust is named in an action or proceeding in which that deed of trust is the subject, and in the event that the trustee maintains a reasonable belief that it has been named in the action or proceeding solely in its capacity as trustee, and not arising out of any wrongful acts or omissions on its part in the performance of its duties as trustee, then, at any time, the trustee may file a declaration of nonmonetary status. The declaration shall be served on the parties in the manner set forth in Chapter 5 (commencing with Section 1010) of Title 14 of the Code of Civil Procedure.

(b) The declaration of nonmonetary status shall set forth the status of the trustee as trustee under the deed of trust that is the subject of the action or proceeding, that the trustee knows or maintains a reasonable belief that it has been named as a defendant in the proceeding solely in its capacity as a trustee under the deed of trust, its reasonable belief that it has not been named as a defendant due to any acts or omissions on its part in the performance of its duties as trustee, the basis for that knowledge or reasonable belief, and that it agrees to be bound by whatever order or judgment is issued by the court regarding the subject deed of trust.

(c) The parties who have appeared in the action or proceeding shall have 15 days from the service of the declaration by the trustee in which to object to the nonmonetary judgment status of the trustee. Any objection shall set forth the factual basis on which the objection is based and shall be served on the trustee.

(d) In the event that no objection is served within the 15-day objection period, the trustee shall not be required to participate any further in the action or proceeding, shall not be subject to any monetary awards as and for damages, attorneys' fees or costs, shall be required to respond to any discovery requests as a nonparty, and shall be bound by any court order

relating to the subject deed of trust that is the subject of the action or proceeding.

(e) In the event of a timely objection to the declaration of nonmonetary status, the trustee shall thereafter be required to participate in the action or proceeding.

Additionally, in the event that the parties elect not to, or fail to, timely object to the declaration of nonmonetary status, but later through discovery, or otherwise, determine that the trustee should participate in the action because of the performance of its duties as a trustee, the parties may file and serve on all parties and the trustee a motion pursuant to Section 473 of the Code of Civil Procedure that specifies the factual basis for the demand. Upon the court's granting of the motion, the trustee shall thereafter be required to participate in the action or proceeding, and the court shall provide sufficient time prior to trial for the trustee to be able to respond to the complaint, to conduct discovery, and to bring other pretrial motions in accordance with the Code of Civil Procedure.

(f) Upon the filing of the declaration of nonmonetary status, the time within which the trustee is required to file an answer or other responsive pleading shall be tolled for the period of time within which the opposing parties may respond to the declaration. Upon the timely service of an objection to the declaration on nonmonetary status, the trustee shall have 30 days from the date of service within which to file an answer or other responsive pleading to the complaint or cross-complaint.

(g) For purposes of this section, ''trustee'' includes any agent or employee of the trustee who performs some or all of the duties of a trustee under this article, and includes substituted trustees and agents of the beneficiary or trustee.

SEC. 5. Section 2934a of the Civil Code is amended to read:

2934a. (a) (1) The trustee under a trust deed upon real property or an estate for years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the recording in the county in which the property is located of a substitution executed and acknowledged by: (A) all of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968; or (B) the holders of more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests in a note secured by real property equivalent to a series transaction, exclusive of any notes or interests of a licensed real estate broker that is the issuer or servicer of the notes or interests or of any affiliate of that licensed real estate broker.

(2) A substitution executed pursuant to subparagraph (B) of paragraph (1) is not effective unless all the parties signing the substitution sign, under penalty of perjury, a separate written document stating the following:

(A) The substitution has been signed pursuant to subparagraph (B) of paragraph (1).

(B) None of the undersigned is a licensed real estate broker or an affiliate of the broker that is the issuer or servicer of the obligation secured by the deed of trust.

(C) The undersigned together hold more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests in a note secured by real property equivalent to a series transaction.

(D) Notice of the substitution was sent by certified mail, postage prepaid, with return receipt requested to each holder of an interest in the obligation secured by the deed of trust who has not joined in the execution of the substitution or the separate document.

The separate document shall be attached to the substitution and be recorded in the office of the county recorder of each county in which the real property described in the deed of trust is located. Once the document required by this paragraph is recorded, it shall constitute conclusive evidence of compliance with the requirements of this paragraph in favor of substituted trustees acting pursuant to this section, subsequent assignees of the obligation secured by the deed of trust and subsequent bona fide purchasers or encumbrancers for value of the real property described therein.

(3) For purposes of this section, ''affiliate of the licensed real estate broker'' includes any person as defined in Section 25013 of the Corporations Code that is controlled by, or is under common control with, or who controls, a licensed real estate broker. ''Control'' means the possession, direct or indirect, of the power to direct or cause the direction of management and policies.

(4) The substitution shall contain the date of recordation of the trust deed, the name of the trustor, the book and page or instrument number where the trust deed is recorded, and the name of the new trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated to the trustee named in the deed of trust. A substitution may be accomplished, with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document, complying with the requirements of this section, substituting trustees for all those deeds of trust.

(b) If the substitution is executed, but not recorded, prior to or concurrently with the recording of the notice of default, the beneficiary or beneficiaries or their authorized agents shall cause notice of the substitution to be mailed prior to or concurrently with the recording thereof, in the manner provided in Section 2924b, to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b. An affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision.

(c) If the substitution is effected after a notice of default has been recorded but prior to the recording of the notice of sale, the beneficiary or beneficiaries or their authorized agents shall cause a copy of the substitution to be mailed, prior to, or concurrently with, the recording thereof, in the manner provided in Section 2924b, to the trustee then of record and to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b. An affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision.

(d) A trustee named in a recorded substitution of trustee shall be deemed to be authorized to act as the trustee under the mortgage or deed of trust for all purposes from the date the substitution is executed by the mortgagee, beneficiaries, or by their authorized agents. Nothing herein requires that a trustee under a recorded substitution accept the substitution. Once recorded, the substitution shall constitute conclusive evidence of the authority of the substituted trustee or his or her agents to act pursuant to this section.

(e) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f after execution of the substitution, any sale conducted by the substituted trustee shall be void.

(f) This section shall become operative on January 1, 1998.

SEC. 6. Section 2945 of the Civil Code is amended to read:

2945. (a) The Legislature finds and declares that homeowners whose residences are in foreclosure are subject to fraud, deception, harassment, and unfair dealing by foreclosure consultants from the time a Notice of Default is recorded pursuant to Section 2924 until the time surplus funds from any foreclosure sale are distributed to the homeowner or his or her successor. Foreclosure consultants represent that they can assist homeowners who have defaulted on obligations secured by their residences. These foreclosure consultants, however, often charge high fees, the payment of which is often secured by a deed of trust on the residence to be saved, and perform no service or essentially a worthless service. Homeowners, relying on the foreclosure consultants' promises

of help, take no other action, are diverted from lawful businesses which could render beneficial services, and often lose their homes, sometimes to the foreclosure consultants who purchase homes at a fraction of their value before the sale. Vulnerable homeowners are increasingly relying on the services of foreclosure consultants who advise the homeowner that the foreclosure consultant can obtain the remaining funds from the foreclosure sale if the homeowner executes an assignment of the surplus, a deed, or a power of attorney in favor of the foreclosure consultant. This results in the homeowner paying an exorbitant fee for a service when the homeowner could have obtained the remaining funds from the trustee's sale from the trustee directly for minimal cost if the homeowner had consulted legal counsel or had sufficient time to receive notices from the trustee pursuant to Section 2924j regarding how and where to make a claim for excess proceeds.

(b) The Legislature further finds and declares that foreclosure consultants have a significant impact on the economy of this state and on the welfare of its citizens.

(c) The intent and purposes of this article are the following:

(1) To require that foreclosure consultant service agreements be expressed in writing; to safeguard the public against deceit and financial hardship; to permit rescission of foreclosure consultation contracts; to prohibit representations that tend to mislead; and to encourage fair dealing in the rendition of foreclosure services.

(2) The provisions of this article shall be liberally construed to effectuate this intent and to achieve these purposes.

SEC. 7. Section 2945.1 of the Civil Code is amended to read:

2945.1. The following definitions apply to this chapter:

(a) ''Foreclosure consultant'' means any person who makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

(1) Stop or postpone the foreclosure sale.

(2) Obtain any forbearance from any beneficiary or mortgagee.

(3) Assist the owner to exercise the right of reinstatement provided in Section 2924c.

(4) Obtain any extension of the period within which the owner may reinstate his or her obligation.

(5) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained that deed of trust or mortgage.

(6) Assist the owner to obtain a loan or advance of funds.

(7) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale.

(8) Save the owner's residence from foreclosure.

(9) Assist the owner in obtaining from the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, the remaining proceeds from the foreclosure sale of the owner's residence.

(b) A foreclosure consultant does not include any of the following:

(1) A person licensed to practice law in this state when the person renders service in the course of his or her practice as an attorney at law.

(2) A person licensed under Division 3 (commencing with Section 12000) of the Financial Code when the person is acting as a prorater as defined therein.

(3) A person licensed under Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code when the person makes a direct loan or when the person (A) engages in acts whose performance requires licensure under that part, (B) is entitled to compensation for the acts performed in connection with the sale of a residence in foreclosure or with the arranging of a loan secured by a lien on a residence in foreclosure, (C) does not claim, demand, charge, collect, or receive any compensation until the acts have been performed or cannot be performed because of an owner's failure to make the disclosures set forth in Section 10243 of the Business and Professions Code or failure to accept an offer from a purchaser or lender ready, willing, and able to purchase a residence in foreclosure or make a loan secured by a lien on a residence in foreclosure on the terms prescribed in a listing or a loan agreement, and (D) does not acquire any interest in a residence in foreclosure directly from an owner for whom the person agreed to perform the acts other than as a trustee or beneficiary under a deed of trust given to secure the payment of a loan or that compensation. For the purposes of this paragraph, a ''direct loan'' means a loan of a real estate broker's own funds secured by a deed of trust on the residence in foreclosure, which loan and deed of trust the broker in good faith attempts to assign to a lender, for an amount at least sufficient to cure all of the defaults on obligations which are then subject to a recorded notice of default, provided that, if a foreclosure sale is conducted with respect to the deed of trust, the person conducting the foreclosure sale has no interest in the residence in foreclosure or in the outcome of the sale and is not owned, controlled, or managed by the lending broker; the lending broker does not acquire any interest in the residence in foreclosure directly from the owner other than as a beneficiary under the deed of trust; and the loan is not made for the purpose or effect of avoiding or evading the provisions of this article.

(4) A person licensed under Chapter 1 (commencing with Section 5000) of Division 3 of the Business and Professions Code when the person is acting in any capacity for which the person is licensed under those provisions.

(5) A person or his or her authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the United States or this state to provide services.

(6) A person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien.

(7) Any person licensed to make loans pursuant to Division 9 (commencing with Section 22000), 10 (commencing with Section 24000), or 11 (commencing with Section 26000) of the Financial Code, subject to the authority of the Commissioner of Corporations to terminate this exclusion, after notice and hearing, for any person licensed pursuant to any of those divisions upon a finding that the licensee is found to have engaged in practices described in subdivision (a) of Section 2945.

(8) Any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, insurance companies, or any person or entity authorized under the laws of this state to conduct a title or escrow business, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of the above, and any agent or employee of the above while engaged in the business of these persons or entities.

(9) A person licensed as a residential mortgage lender or servicer pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.

(c) Notwithstanding subdivision (b), any person who provides services pursuant to paragraph (9) of subdivision (a) is a foreclosure consultant unless he or she is the owner's attorney.

(d) ''Person'' means any individual, partnership, corporation, limited liability company, association or other group, however organized.

(e) ''Service'' means and includes, but is not limited to, any of the following:

(1) Debt, budget, or financial counseling of any type.

(2) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure.

(3) Contacting creditors on behalf of an owner of a residence in foreclosure.

(4) Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure his or her default and reinstate his or her obligation pursuant to Section 2924c.

(5) Arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure.

(6) Advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court.

(7) Giving any advice, explanation or instruction to an owner of a residence in foreclosure which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure pursuant to a power of sale contained in any deed of trust.

(8) Arranging or attempting to arrange for the payment by the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, of the remaining proceeds to which the owner is entitled from a foreclosure sale of the owner's residence in foreclosure. Arranging or attempting to arrange for the payment shall include any arrangement where the owner transfers or assigns the right to the remaining proceeds of a foreclosure sale to the foreclosure consultant or any person designated by the foreclosure consultant, whether that transfer is effected by agreement, assignment, deed, power of attorney, or assignment of claim.

(f) ''Residence in foreclosure'' means a residence in foreclosure as defined in Section 1695.1.

(g) ''Owner'' means a property owner as defined in Section 1695.1.

(h) ''Contract'' means any agreement, or any term thereof, between a foreclosure consultant and an owner for the rendition of any service as defined in subdivision (e).

SEC. 8. Section 2945.3 of the Civil Code is amended to read:

2945.3. (a) Every contract shall be in writing and shall fully disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation.

(b) The following notice, printed in at least 14-point boldface type and completed with the name of the foreclosure consultant, shall be printed immediately above the statement required by subdivision (c):

''NOTICE REQUIRED BY CALIFORNIA LAW

_____ or anyone working
(Name)
for him or her CANNOT:

(1) Take any money from you or ask you for money

until _____ has
(Name)
completely finished doing everything he or she said he or she would do; and

(2) Ask you to sign or have you sign any lien, deed of trust, or deed.''

(c) The contract shall be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract; shall be dated and signed by the owner; and shall contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 10-point bold type, as follows: ''You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.''

(d) The contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name and address of the foreclosure consultant to which the notice or cancellation is to be mailed.

(2) The date the owner signed the contract.

(e) The contract shall be accompanied by a completed form in duplicate, captioned ''notice of cancellation'', which shall be attached to the contract, shall be easily detachable, and shall contain in type of at least 10-point the following statement written in the same language as used in the contract:

''NOTICE OF CANCELLATION

_____
(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to _____
(Name of foreclosure consultant)
at _____
(Address of foreclosure consultant's place of business)
NOT LATER THAN MIDNIGHT OF _____ .
(Date)

I hereby cancel this transaction _____.
(Date)
_____"
(Owner's signature)

(f) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation.

(g) Until the foreclosure consultant has complied with this section, the owner may cancel the contract.

(h) After the 65-day period following the foreclosure sale, the foreclosure consultant may enter into a contract to assist the owner in arranging, or arrange for the owner, the release of funds remaining after the foreclosure sale ("surplus funds") from the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee. However, prior to entering into that contract, the foreclosure consultant shall do all of the following:

(1) Prepare and deliver to the owner a notice in 14-point boldface type and substantially in the form set forth below.

(2) Obtain a receipt executed by each owner and acknowledged before a notary public, acknowledging a copy of the notice set forth below.

"NOTICE TO OWNER

_____ _____
(Date of Contract) (Date signed by Owner)

_____
(Date of Foreclosure Sale)

You may be entitled to receive all or a portion of the surplus funds generated from the foreclosure sale of your real property located at: _____ _____, California on _____ without paying any fees or costs of any kind to a third party. You should check directly with the trustee or beneficiary who conducted the foreclosure sale of your property to determine the name, address, and telephone number of the party to whom you can direct inquiries regarding filing a claim for surplus funds without paying a fee to a third party. No person or entity may require you to enter into any agreement requiring the payment of a fee to that person or entity in order to receive the surplus funds from the foreclosure sale to which you may be entitled during the 65 days after the date of the trustee's sale."

SEC. 9. Section 2945.4 of the Civil Code is amended to read:

2945.4. It shall be a violation for a foreclosure consultant to:

(a) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that he or she would perform.

(b) Claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason which exceeds 10 percent per annum of the amount of any loan which the foreclosure consultant may make to the owner.

(c) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation. That security shall be void and unenforceable.

(d) Receive any consideration from any third party in connection with services rendered to an owner unless that consideration is fully disclosed to the owner.

(e) Acquire any interest in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted. Any interest acquired in violation of this subdivision shall be voidable, provided that nothing herein shall affect or defeat the title of a bona fide purchaser or encumbrancer for value and without notice of a violation of this article. Knowledge that the property was ''residential real property in foreclosure,'' does not constitute notice of a violation of this article. This subdivision may not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of residential real property in foreclosure.

(f) Take any power of attorney from an owner for any purpose, except to inspect documents as provided by law.

(g) Induce or attempt to induce any owner to enter into a contract which does not comply in all respects with Sections 2945.2 and 2945.3.

(h) Enter into an agreement to assist the owner in arranging, or arrange for the owner, the release of surplus funds prior to 65 days after the trustee's sale is conducted, whether the agreement involves direct payment, assignment, deed, power of attorney, or assignment of claim from an owner to the foreclosure consultant or any person designated by the foreclosure consultant.

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.

———